

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization, The
Appellate Project**

Recommenders

Clark, Cameron
cclark@clinical.law.berkeley.edu
Schlosberg, Deborah
dschlosberg@law.berkeley.edu
510-664-4614
Chemerinsky, Erwin
echemerinsky@law.berkeley.edu
5106426483

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Kendrick Peterson
474 Clifton St.
Oakland, CA 94618
kendrick.peterson@berkeley.edu
(702) 682-8787

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of California, Berkeley, School of Law. As a former resident of Washington D.C. with family living in Culpeper, Virginia until recently, I have always committed myself to public service in the area. After seeing your dedication to the Share the Wealth program, I noticed your commitment to inclusivity. For these reasons in part, I am writing to apply for a clerkship in your chambers for the 2024-2025 term or the next available term. Due to my desire to clerk specifically in your chambers, I have no preference in term. As a joint-degree student, an Editorial Board Officer for the *California Law Review*, member of the Trial Competition Team, and 2022-2023 Student Body President, I believe my skill set is uniquely positioned for this role.

My interdisciplinary work during law school is overlayed with my own experiences with intersectionality. My journey as a Black, Queer, military student attending a predominantly Catholic institution required me to reimagine how best to articulate my own views. Often being the “only” with my demographic qualities in spaces has taught me a unique style of communication that uplifts clarity, objectivity, and is suited well for collaborative work in chambers.

As a federal law clerk, I would be prepared to make impactful contributions given my strength in legal research and writing fostered by my experiences. These are skills that I have intentionally developed to promote equity through the law. For example, during this past summer, I assisted in drafting an amicus brief in *Students for Fair Admissions v. Harvard*. It was my acute attention to detail, fostered through my Trial team deposition experience, and experience drafting a thesis on meritocratic law school admissions that allowed me to contribute substantively to this impact litigation matter. If chosen to clerk for you, I hope to leverage and develop these same skills.

Please find my resume, transcript, and writing sample attached. My letters of recommendation, from Dean Erwin Chemerinsky (echemerinsky@berkeley.edu), Pro Bono Program Director Deborah Schlosberg (dschlosberg@berkeley.edu), and a joint letter from Director Jeff Selbin, Anavictoria Avila, and Cameron D. Clark on behalf of the Policy Advocacy Clinic are also attached.

Thank you for your consideration and I would welcome any opportunity to interview with you.



Kendrick Peterson

Kendrick Peterson

474 Clifton St. Oakland, CA 94618 • Kendrick.Peterson@berkeley.edu • 702-682-8787

EDUCATION

University of California, Berkeley, School of Law

Juris Doctor Candidate | Joint GPA: 3.815

Berkeley, CA

Expected May 2024

Activities: 2022-2023 Student Body President | *California Law Review:* Alumni Development Editor | Trial Competition Team

Honors/Awards: The Appellate Project (Mentee) | Human Rights Campaign Southern Leader | LGBTQ Point Foundation Scholarship

University of California, Berkeley, Goldman School of Public Policy

Master of Public Policy Candidate

Berkeley, CA

Expected May 2024

Activities: UnCommon Law MPP Consultant | Black Students in Public Policy (BiPP) | Atlanta Violence Defense Trip Leader

Honors/Awards: Javits Fellowship for Political Leadership | Carnegie Mellon Public Policy International Affairs Fellow

University of Notre Dame

Bachelor of Arts, Political Science / Minor: Business Economics and Public Policy.

Notre Dame, IN

May 2020

Activities: Marching Band: Principal Trombonist | TEDX Speaker | Vice Presidential Cabinet for LGBTQ+ Student Climate

Study Abroad: Department of State Gilman Awardee: Ancient Corinth, Greece (Summer 2019)

Honors/Awards: Bill and Melinda Gates Millennium National Scholarship | Harvard John F. Kennedy School of Government Public Policy Leadership Fellow | G. Brinkley Prize for Service in the Department University and Wider World | Theodore Hesburgh Award for Leadership and Public Service (Policy Student of the Year) | U.S Army Reserves Medal for Athletic and Academic Excellence

PROFESSIONAL EXPERIENCE

Morrison Foerster LLP

Summer Associate | Keith Wetmore Fellowship Awardee

Washington, D.C

May 2023 – August 2023

- Attended a firm retreat as one of 6 2L Fellows chosen from an applicant pool of 1200 based on service to the broader legal community, academic rigor, and commitment to diversifying trial advocacy teams.
- Analyzed the definition of “objective fear” in an effort to gain asylum for a client facing both political and religious persecution.

Hogan Lovells US LLP

1L Summer Associate

Washington, D.C

May 2022– August 2022

- Organized memos on insolvency and “bad faith” actions for brief implementation for white collar litigation group.
- Revised research primers on Intersectionality for associates within the Education Regulatory and Appellate cross practice team.
- Drafted amicus brief summaries for Appellate team to implement into argument on behalf of Defendants in the Supreme Court Case *Students for Fair Admissions v. Harvard*.

U.S House of Representatives, Natural Resources Committee

Graduate Legislative Intern

Washington, D.C

June 2021– August 2021

- Compiled research for the investigation team around toxic salmon proliferation and poisonous playground surfaces.
- Conducted legal research on topics related to the Committee’s jurisdictions of Insular affairs and Indigenous peoples’ rights.
- Partnered with congressional staff to develop questions for hearing witnesses from across corporate and administrative law sectors.

McKinsey Social Sector Solutions

Policy/Law Student Consultant

Berkeley, CA

January 2021– May 2021

- Consulted California “ChangeLawyers”, a nonprofit focused on diversifying the legal profession in California as well as beyond.
- Developed an extensive marketing and fundraising plan alongside McKinsey partners to reach aspiring POC legal professionals.
- Constructed a financial sustainability and revenue generation plan with respect to Diversity Equity and Inclusion goals.

African American Policy Forum, Columbia Law School

Administrative Intern Assistant to Professor Kimberlé Crenshaw

New York, NY

June 2020 – August 2020

- Collaborated with Columbia Law School’s Center for Intersectionality and Social Policy Studies on the #SAYHERNAME national campaign under the supervision of a leader in the fields of Intersectionality and Critical Race Theory.
- Facilitated meetings with corporate partners during the aftermath of the 2020 Civil Rights movement and the COVID-19 pandemic.

SKILLS & INTERESTS

Skills: Extemporaneous Slam Poetry and Speech | Tenants Rights: Housing Contract Review | Temporary Protective Order Drafting

Interests: Cross Country Running (1600/800m Club Varsity Runner) | Japanese Animation | Jazz/Concert Trombone

Berkeley Law

University of California

Office of the Registrar

Kendrick Marcellous Peterson
Student ID: 3036333494
Admit Term: 2020 Fall

Printed: 2023-06-11 09:34
Page 1 of 3

Academic Program History
Major: Public Policy (Concurrent with Law JD)
Major: Law JD (Concurrent with Public Policy MPP)

Cumulative Totals 32.0 0.0

2020 Fall					
Course	Description	Units	Law Units	Grade	
PUBPOL 200A	FOUNDATIONS FOR PUB Mia Bird Amy Lerman Ashley Adams	3.0	0.0	A	
PUBPOL 210A	ECO PUB POL ANAL Steven Raphael	4.0	0.0	A-	
PUBPOL 240A	DEC AN MOD Q METH Jesse Rothstein	4.0	0.0	A-	
PUBPOL 271	THE POLITICAL ECONO Robert Reich Asha DuMonthier Nicole Updegrave	4.0	0.0	A	
Term Totals		15.0	0.0		
Cumulative Totals		15.0	0.0		

2021 Fall					
Course	Description	Units	Law Units	Grade	
LAW 200F	Civil Procedure Linda Krieger	5.0	5.0	P	
LAW 201	Torts Talha Syed	4.0	4.0	P	
LAW 202.1A	Legal Research and Writing Linda Tam	3.0	3.0	CR	
LAW 202F	Contracts Asad Rahim	4.0	4.0	P	
Term Totals		16.0	16.0		
Cumulative Totals		48.0	16.0		

2021 Spring					
Course	Description	Units	Law Units	Grade	
MBA 292S	SOCIAL SECTOR SOLUT Nora Silver	3.0	0.0	B+	
PUBPOL 200B	PRO POLICY PRACTICE Mia Bird Meredith Sadin Claire Montialoux	3.0	0.0	A	
PUBPOL 210B	ECO PUB POL ANAL Hillary Hoynes	4.0	0.0	A-	
PUBPOL 240B	DEC AN MOD Q METH Rucker Johnson	4.0	0.0	B+	
PUBPOL 290	SPEC TOPICS PUB POL Jennifer Skeem	3.0	0.0	A	
Term Totals		17.0	0.0		

2022 Spring					
Course	Description	Units	Law Units	Grade	
LAW 202.1B	Written and Oral Advocacy Linda Tam	2.0	2.0	P	
LAW 220.6	Constitutional Law Fulfills Constitutional Law Requirement	4.0	4.0	P	
LAW 230	Criminal Law Erwin Chemerinsky	4.0	4.0	P	
LAW 241	Evidence Andrea Roth	3.0	3.0	P	
LAW 261.7	Disputes with Sovereigns David Oppenheimer David Bowker	1.0	1.0	CR	
Term Totals		14.0	14.0		
Cumulative Totals		62.0	30.0		


 Carol Rachwald, Registrar

Printed: 2023-06-11 09:34
Page 2 of 3

<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>
LAW	220.9 First Amendment Erwin Chemerinsky	3.0	3.0	
LAW	227.8 Supreme Court Sem Fulfills 1 of 2 Writing Requirements	3.0	3.0	
LAW	246.1 Amanda Tyler Criminal Trial Practice	3.0	3.0	
	Units Count Toward Experiential Requirement			
LAW	258 Charles Denton Estates and Trusts	3.0	3.0	
LAW	285.33 Kristen Holmquist How to Think and Write Like a Judge	1.0	1.0	
	Term Totals	<u>Units</u> 0.0	<u>Law Units</u> 0.0	

This transcript processed and delivered by Parchment

Kendrick Marcellous Peterson
Student ID: 3036333494
Admit Term: 2020 Fall

Berkeley Law
University of California
Office of the Registrar

Printed: 2023-06-11 09:34
Page 3 of 3

Cumulative Totals 93.0 47.0



  Carol Rachwald, Registrar

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University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	-	High Honors	CR	-	Credit
H	-	Honors	NP	-	Not Pass
P	-	Pass	I	-	Incomplete
PC	-	Pass Conditional or Substandard Pass (1997-98 to present)	IP	-	In Progress
NC	-	No Credit	NR	-	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: <https://www.law.berkeley.edu/careers/for-employers/grading-policy/>

Transcript questions should be referred to the Registrar.

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UNIVERSITY OF NOTRE DAME

NOTRE DAME, INDIANA 46556

Peterson, Kendrick Marcellous

Date Issued: 14-JUN-2020

Student ID: XXXXX6400

Page: 1

Birth Date: 11-21-XXXX

Degree Awarded: Bachelor of Arts

Date Conferred: May 17, 2020

College: College of Arts and Letters

Issued To: Kendrick Peterson

Parchment DocumentID: 28862240

kpeter12@alumni.nd.edu

Course Level: Undergraduate

Program: Bachelor of Arts

College: College of Arts and Letters

Major: Political Science

Minor: Hesburgh Program Public Serv

Business Economics

						UND SEMESTER TOTALS				OVERALL TOTALS			
CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	ATTEMP HRS	EARNED HRS	GPA HRS	GPA	ATTEMP HRS	EARNED HRS	GPA HRS	GPA
TRANSFER CREDIT ACCEPTED BY THE UNIVERSITY:													
Fall 2016		College Board											
WR	13100	Writing and Rhetoric	3.000										
		Total Credits:	3.000										
UNIVERSITY OF NOTRE DAME CREDIT:													
Fall Semester 2016													
First Year of Studies													
BIOS	10119	Evolution and Society	3.000	C-	5.001								
FYS	10101	Moreau First Year Experience	1.000	A	4.000								
MATH	10130	Beginning Logic	3.000	C+	6.999								
MUS	10249	Marching Band	1.000	S	0.000								
POLS	10400	World Politics: Intro to Comp	3.000	B+	9.999								
POLS	13181	Soc Science University Seminar	3.000	A	12.000								
ROSP	10101	Beginning Spanish I	4.000	B+	13.332								
Good Standing		Total			51.331	18.000	18.000	17.000	3.019	21.000	21.000	17.000	3.019
Spring Semester 2017													
First Year of Studies													
ACMS	10145	Stats for Business I	3.000	C-	5.001								
FYS	10102	Moreau First Year Experience	1.000	A	4.000								
MUS	10241	Wind Ensembles	0.000	S	0.000								

CONTINUED ON PAGE 2

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Page: 2

Birth Date: 11-21-XXXX

CRSE ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS				OVERALL TOTALS			
					ATTEMP HRS	EARNED HRS	GPA HRS	GPA	ATTEMP HRS	EARNED HRS	GPA HRS	GPA
University of Notre Dame Information continued:												
PHIL 10105	Intro to Phil: Ethics & Polit.	3.000	A-	11.001								
PHYS 10240	Elementary Cosmology	3.000	B	9.000								
POLS 10100	American Politics	3.000	B+	9.999								
ROSP 10102	Beginning Spanish II	4.000	B-	10.668								
Good Standing	Total			49.669	17.000	17.000	17.000	2.922	38.000	38.000	34.000	2.971
Fall Semester 2017												
College of Arts and Letters												
ECON 20010	Principles of Microeconomics	3.000	C+	6.999								
MUS 10249	Marching Band	0.000	S	0.000								
PHIL 20441	Political Philosophy	3.000	A-	11.001								
POLS 30653	Politics and Conscience	3.000	A	12.000								
ROSP 20201	Intermediate Spanish I	3.000	B-	8.001								
THEO 20625	Discipleship: Loving Action	3.000	A-	11.001								
THEO 33936	SSL: Kinship on the Margins	3.000	S	0.000								
Good Standing	Total			49.002	18.000	18.000	15.000	3.267	56.000	56.000	49.000	3.061
Spring Semester 2018												
College of Arts and Letters												
CSEM 23102	Sexualities and Moralities	3.000	A	12.000								
ECON 20020	Principles of Macroeconomics	3.000	C-	5.001								
HESB 20010	Introduction to Public Policy	3.000	B-	8.001								
MUS 10241	Wind Ensembles	0.000	S	0.000								
MUS 10246	Varsity Band	0.000	S	0.000								
POLS 30068	Topics in Civ Librts/Civ Rgts	3.000	B+	9.999								
POLS 30210	US Nat'l Security Policymaking	3.000	B	9.000								
THEO 10002	Found of Theo: Biblcl Historcl	3.000	A	12.000								
Good Standing	Total			56.001	18.000	18.000	18.000	3.111	74.000	74.000	67.000	3.075
Summer Session 2018												
College of Arts and Letters												
POLS 45999	Summer Internship	1.000	S	0.000								
	Total			0.000	1.000	1.000	0.000	0.000	75.000	75.000	67.000	3.075
Fall Semester 2018												
College of Arts and Letters												
BAAL 20100	Accountancy I	3.000	B-	8.001								
HIST 40628	African-American Resistance	3.000	A-	11.001								
POLS 30077	Free Speech	3.000	B+	9.999								

CONTINUED ON PAGE 3

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Birth Date: 11-21-XXXX

CRSE ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS				OVERALL TOTALS			
					ATTEMP HRS	EARNED HRS	GPA HRS	GPA	ATTEMP HRS	EARNED HRS	GPA HRS	GPA
University of Notre Dame Information continued:												
POLS 30569	Inequality and Democracy	3.000	B+	9.999								
POLS 43001	JrSem: Divided States of America	3.000	A-	11.001								
Good Standing	Total			50.001	15.000	15.000	15.000	3.333	90.000	90.000	82.000	3.122
Spring Semester 2019												
College of Arts and Letters												
ENGL 24401	DC Politics and Poems	3.000	A	12.000								
HESB 34091	DC Foundations of Public Policy	3.000	A-	11.001								
HESB 34092	DC Found. of Public Policy-PPV	3.000	A-	11.001								
HESB 34093	DC Washington DC Internship	3.000	S	0.000								
HESB 34104	DC Pol. Advocacy & Public Opinion	3.000	A-	11.001								
Good Standing	Total			45.003	15.000	15.000	12.000	3.750	105.000	105.000	94.000	3.202
Summer Session 2019												
College of Arts and Letters												
ARHI 24110	CO The Art and Landscape of Greec	3.000	B+	9.999								
	Total			9.999	3.000	3.000	3.000	3.333	108.000	108.000	97.000	3.206
Fall Semester 2019												
College of Arts and Letters												
BAAL 20150	Corporate Financial Management	3.000	B-	8.001								
HESB 30588	Urban Politics	3.000	A-	11.001								
MUS 10249	Marching Band	1.000	S	0.000								
POLS 30071	Gay Rights & the Constitution	3.000	B-	8.001								
POLS 53001	Sr Sem: Political Psychology of Racism	3.000	B	9.000								
Good Standing	Total			36.003	13.000	13.000	12.000	3.000	121.000	121.000	109.000	3.184
Spring Semester 2020												
During the Spring 2020 semester, a global health emergency required significant changes to coursework. Unusual enrollment patterns and grades reflect the tumult of the time.												
College of Arts and Letters												
ASIA 33309	Introduction to Japanese Popular Culture	3.000	A	12.000								
HESB 43524	Unequal America	3.000	A	12.000								

CONTINUED ON PAGE 4

UNIVERSITY OF NOTRE DAME

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Peterson, Kendrick Marcellous

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Student ID: XXXXX6400

Page: 4

Birth Date: 11-21-XXXX

CRSE ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS				OVERALL TOTALS			
					ATTEMPT	EARNED	GPA	GPA	ATTEMPT	EARNED	GPA	GPA
					HRS	HRS	HRS		HRS	HRS	HRS	
University of Notre Dame Information continued:												
HESB 48000	Indep. Capstone Rsrch Project	3.000	A	12.000								
IRLL 30106	Sex and Power in Irish Literature: From Warrior Queens to Punk Poet	3.000	A-	11.001								
MUS 10241	Wind Ensembles	0.000	S	0.000								
MUS 10246	Varsity Band	0.000	S	0.000								
Good Standing		Total		47.001	12.000	12.000	12.000	3.917	133.000	133.000	121.000	3.256
Dean's List												

***** TRANSCRIPT TOTALS *****

NOTRE DAME	Ehrs:	130.000	Qpts:	394.010
	GPA-Hrs:	121.000	GPA:	3.256
TRANSFER	Ehrs:	3.000	Qpts:	0.000
	GPA-Hrs:	0.000	GPA:	0.000
OVERALL	Ehrs:	133.000	Qpts:	394.010
	GPA-Hrs:	121.000	GPA:	3.256

***** END OF TRANSCRIPT *****

CAMPUS CODES

All courses taught at an off campus location will have a campus code listed before the course title.

The most frequently used codes are:

AF	Angers, France
DC	Washington, DC
FA	Fremantle, Australia
IA	Innsbruck, Austria
IR	Dublin, Ireland
LA	London, England (Fall/Spring)
LE	London, England (Law-JD)
LG	London, England (Summer EG)
LS	London, England (Summer AL)
PA	Perth, Australia
PM	Puebla, Mexico
RE	Rome, Italy
RI	Rome, Italy (Architecture)
SC	Santiago, Chile
SP	Toledo, Spain

For a complete list of codes, please see the following website:
<http://registrar.nd.edu/pdf/campuscodes.pdf>

GRADING SYSTEM - SEMESTER CALENDAR

Previous grading systems as well as complete explanations are available at the following website:

<http://registrar.nd.edu/students/gradeinfo.php>

August 1988 - Present

Letter Grade	Point Value	Legend
A	4	
A-	3.667	
B+	3.333	
B	3	
B-	2.667	
C+	2.333	
C	2	Lowest passing grade for graduate students.
C-	1.667	
D	1	Lowest passing grade for undergraduate students.
F	0	Failure
F*	0	No final grade reported for an individual student (Registrar assigned).
X	0	Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled.

I	0	Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code.
U		Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).

Grades which are not Included in the Computation of the Average

S	Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).
V	Auditor (Graduate students only).
W	Discontinued with permission. To secure a "W" the student must have the authorization of the dean.
P	Pass in a course taken on a pass-fail basis.
NR	Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.
NC	No credit in a course taken on a pass-no credit basis.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradeinfo.php>

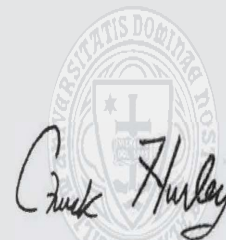
THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradeinfo.php>

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CHUCK HURLEY, UNIVERSITY REGISTRAR

In accordance with USC 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without the written consent of the student. Alteration of this transcript may be a criminal offense.

COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:

http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).

The first digit of the course number indicates the level of the course.

ENGL 0 X - XXX	= Pre-College course
ENGL 1 X - XXX	= Freshman Level course
ENGL 2 X - XXX	= Sophomore Level course
ENGL 3 X - XXX	= Junior Level course
ENGL 4 X - XXX	= Senior Level course
ENGL 5 X - XXX	= 5th Year Senior / Advanced Undergraduate Course
ENGL 6 X - XXX	= 1st Year Graduate Level Course
ENGL 7 X - XXX	= 2nd Year Graduate Level Course (MBA / LAW)
ENGL 8 X - XXX	= 3rd Year Graduate Level Course (MBA / LAW)
ENGL 9 X - XXX	= Upper Level Graduate Level Course

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Heinz College of
Information Systems and Public Policy
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, Pennsylvania 15213-3890

December 23, 2019

Re: Kendrick Peterson

To Whom it may concern:

The Public Policy and International Affairs (PPIA) Junior Summer Institute (JSI) at Carnegie Mellon University's H. John Heinz III College provides 30 undergraduate students between their junior and senior years of college the opportunity to develop the skills needed for admission into the nation's top policy graduate programs. The seven-week program is held on the Carnegie Mellon campus and provides intensive training in policy and politics, quantitative analysis, communication and leadership skills.

Over the course of the intensive residential experience in the summer of 2019, PPIA fellows took courses in Applied Economics, Experiments, Behavior, and Development, Applied Statistics for Public Policy, and Poverty and Social Policy. They toured Pittsburgh-based organizations relevant to the program's mission and content, and attended leadership seminars. The coursework focused on developing the vital skills needed for graduate study and careers in public policy and international affairs. Students attended classes each day and received course grades and an evaluation of individual progress at the conclusion of the program.

In addition to a rigorous course load, the fellows were exposed to a range of other experiences to complement their in-class experience. Each week, leaders in the public and non-profit sectors met with students to discuss issues, challenges, and rewards in careers in public and non-profit management and international affairs. Heinz College faculty and local leaders also gave lunchtime presentations in which they discussed their research and led discussions on policy issues.

Based on the instructors' evaluation of the student, comments from the teaching assistants, and our own observations about this summer's cohort, this student is a strong candidate for graduate studies.

Please feel free to contact me at 412-268-1909 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gladys P. Sriprasert".

Gladys Perez Sriprasert
Director, Public Policy and Management Programs



**Carnegie Mellon University Heinz College
2019 Junior Summer Institute
Student Evaluation**

Student Name

Kendrick Peterson

PPIA Director

Gladys Perez Sriprasert

Summary of student strengths

Kendrick successfully managed a rigorous set of courses and co-curricular activities. He is an outgoing student with natural leadership skills and he actively engaged with the programming throughout the summer.

Summary of student weaknesses

N/A

What's not captured in general evaluation and descriptive comments?

Overall Recommendation

I strongly recommend Kendrick for graduate studies in public policy.



Carnegie Mellon University Heinz School
2019 Junior Summer Institute
Student Evaluation

Student Name:	Kendrick Peterson
Course Title:	Applied Economics
Course Instructor(s):	Mary Ellen Benedict

Course Description	Course Evaluation
--------------------	-------------------

A

This course will introduce you to the basic concepts and tools of microeconomics and welfare economics, which are used to analyze public policy from an economic perspective. We will use the economic framework to explain:

1. the demand and supply components of markets;
2. when markets are efficient and equitable;
3. how government policy relates to market failure at the microeconomic level.

The focus of the class will be on public policy and its relation to economics. In order to apply economic concepts in a practical way, we will use current events as supplied by the textbook and by additional readings. I hope to help you further develop your critical thinking skills by using economic theory as a foundation for problem analysis.

Areas of Evaluation	Descriptive Comments
1. Participation	<u>Excellent. Kendrick came prepared for class and was a leader in class discussion.</u>
2. Analytic Ability	<u>Solid. Kendrick has high grades on homeworks and in class discussion. He had high Bs on his exams.</u>
3. Writing / Communication Skills	<u>Kendrick earned a B+ on his short report and did very well on his exam essays. I was especially impressed with his argumentation skills in discussion.</u>
4. Motivation / Effort	<u>Excellent.</u>
5. Improvement over course of summer	<u>Kendrick came into the class with some economics background. He did well throughout the course.</u>
6. Performance in comparison with other JSI participants	<u>He performed well among his peers.</u>

Summary of student strengths

Excellent verbal communication skills; very good writing skills. Creative.

Summary of student weaknesses

None.

What's not captured in general evaluation and descriptive comments?

Kendrick's enthusiasm is contagious. He is very good at getting the group discussing a topic.

Overall Recommendation

Recommend without reservations.



Carnegie Mellon University Heinz School
2019 Junior Summer Institute
Student Evaluation

Student Name:	Kendrick Peterson
Course Title:	Applied Statistics for Public Policy
Course Instructor(s):	Angela Reynolds

Course Description	Course Evaluation
This course is an intensive introduction to statistical methods. It provides students with a background in descriptive statistics, univariate and bivariate data analysis and summarizing findings from a statistical analysis. Topics covered include descriptive statistics, elementary probability, random sampling, hypothesis testing, difference of means tests, and linear regression.	<u>A</u>

Areas of Evaluation	Descriptive Comments
1. Participation	<u>A very active participant in class (top 10%).</u>
2. Analytic Ability	<u>Very good analytical ability, though at times Kendrick will think on the material and then approach.</u>
3. Writing / Communication Skills	<u>Effective oral communicator. Limited observation of written skills given the structure of the course.</u>
4. Motivation / Effort	<u>Very motivated throughout the course.</u>
5. Improvement over course of summer	<u>Challenges towards the middle of the course, but definitely demonstrated improvement towards the end.</u>
6. Performance in comparison with other JSI participants	<u>Average performance compared to other students taught this summer.</u>

Summary of student strengths
A drawing personality and an authentic person. A pleasure to teach.

Summary of student weaknesses
Opportunity to improve time management.

What's not captured in general evaluation and descriptive comments?

Overall Recommendation

I strongly recommend Kendrick Peterson for graduate studies.



**Carnegie Mellon University
Heinz School
2018 Junior Summer Institute
Student Evaluation**

Student Name:	Kendrick Peterson
Course Title:	Poverty and social policy
Course Instructor(s):	Silvia Borzutzky

Course Description	Course Evaluation
--------------------	-------------------

The goals of this course are to analyze the concept of poverty and its measurements and selected social policies pursued in Western Europe, the U.S. and in developing countries

The first section will analyze and define poverty and inequality measurements (one week)

The second section will focus on the concept of the Welfare State and anti-poverty policies pursued in Western Europe (one week)

The third section will focus on the U.S and it will analyze health, housing, social security and welfare policies in the U.S (three weeks)

The fourth section will analyze poverty and the behavior of the poor in very poor countries, or regions of the world. It will also include a discussion of specific policies such as micro financing, Conditional and Unconditional Cash Transfers, also known as Universal Basic Income.

Areas of Evaluation	Descriptive Comments
1. Participation	<u>Outstanding</u>
2. Analytic Ability	<u>Excellent</u>
3. Writing / Communication Skills	<u>excellent</u>
4. Motivation / Effort	<u>outstanding</u>
5. Improvement over course of summer	<u>excellent</u>
6. Performance in comparison with other JSI participants	<u>excellent</u>

Summary of student strengths

Excellent writing, research and analytical skills

Summary of student weaknesses

What's not captured in general evaluation and descriptive comments?

Overall Recommendation

I strongly recommend Kendrick for admission into a graduate program



**Carnegie Mellon University
Heinz School
2019 Junior Summer Institute
Student Evaluation**

Student Name:	Kendrick Peterson
Course Title:	Experiments, Behavior, and Development
Course Instructor(s):	Mark Wessel

Course Description	Course Evaluation
--------------------	-------------------

Students are introduced to the design and use of field experiments (randomized controlled trials) in the evaluation of projects and programs in developing countries. The primary assignment for this course was a term-long small group (3 students each) project in which I asked the students to design, present, write a report on a field experiment (randomized controlled trial) to test the efficacy of a program run by an NGO or government. Since this assignment had multiple components, there was limited opportunity for me to observe individual student performance. In particular, for most students I am unable to evaluate systematically individual writing and analytic ability. This evaluation is based primarily on the quality of the group project in which the student was involved, the peer evaluations submitted by others in their group, and my more informal observation of their contributions and learning.

Areas of Evaluation	Descriptive Comments
1. Participation	Consistent and substantial participation in class.
2. Analytic Ability	Unable to individually observe
3. Writing / Communication Skills	Unable to individually observe writing. Presentation skills were excellent.
4. Motivation / Effort	Above average
5. Improvement over course of summer	Consistent good work
6. Performance in comparison with other JSI participants	Above average.

Summary of student strengths

Summary of student weaknesses

What's not captured in general evaluation and descriptive comments?

Kendrick's group did a very good job in designing their field experiment. They chose a very tricky project and did a very good job facing up to its complexities. The final report was well-written and thoughtful. This group seemed to work very well together. My sense from the peer evaluations, from individual discussions, and from my observation of their presentations was that Kendrick's most important contributions were in designing and executing the class presentations and in constructing the final report. Kendrick has a dynamic and engaging personality. His communication and interpersonal skills are excellent. He was very good at handling questions and comments during presentations – probably the best in the class.

Overall Recommendation

I believe Kendrick is a smart, personable and motivated student who will succeed in a graduate public policy program. We would be happy to have him at Carnegie Mellon.

1/16/2021

Academic Summary | CalCentral



June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Kendrick Peterson, University of California, Berkeley, School of Law

Dear Judge Walker:

We write to express our enthusiastic support for Kendrick Peterson to serve as a clerk in your chambers. Kendrick is smart, talented, and compassionate, and we recommend him most highly.

We are clinical instructors in the Policy Advocacy Clinic at the University of California, Berkeley School of Law. The Policy Advocacy Clinic is an interdisciplinary clinic where law and public policy students collaborate to address racial and economic injustice. Current projects include state and national efforts to eliminate regressive and racially discriminatory fees and fines in the juvenile and criminal legal systems.

We have had the pleasure of working with Kendrick since he enrolled in the clinic last fall and returned this spring. During the academic year, students under our supervision conducted research and provided technical legal and policy assistance to local clients pursuing legislative fee repeal campaigns in 15 states, with victories secured from the Pacific Northwest to the Deep South. Kendrick joined our Illinois team, one of four students tasked with building and supporting a campaign during the 2023 state legislative session.

Kendrick's early and engaged contributions leveraged his knowledge at the intersection of law and public policy. As a candidate in Berkeley's joint JD-MPP program, Kendrick was uniquely equipped to handle complex assignments with multi-disciplinary components. As we built our early research agenda, Kendrick played a key role by identifying Illinois' public records laws and developing a plan to collect county-level data on the recipients of juvenile court revenue. After gaining a clear understanding of county-level practices, Kendrick drafted an extensive policy memorandum with regional and county-by-county analyses of the negligible cost of repealing juvenile fees and fines in Illinois. Thanks to Kendrick's comprehensive research, the team had a roadmap to prioritize stakeholder outreach in the areas where our impact would be greatest.

Kendrick also articulated his learning goals and benchmarks, which helped us support his professional development. For example, Kendrick wanted to improve his public speaking and community engagement skills. Pandemic-era challenges notwithstanding, Kendrick eagerly availed himself of opportunities to conduct outreach with grassroots organizations in Illinois, creating new connections and building important partnerships. Along with the team, his efforts culminated in the launch of our campaign kick-off event in Springfield, the state capitol, where Kendrick gave an impassioned speech and call-to-action to a crowd of local activists and advocates. Kendrick distinguished himself as the key speaker who motivated the local community to take action and join our campaign.

By producing consistent and enthusiastic work, Kendrick was well-positioned to draft amendments to our bill to repeal juvenile fees and fines in Illinois. Kendrick carefully considered the original bill language, balancing stakeholder feedback while maintaining the spirit and substance of the bill's intent. Working with his supervisors, Kendrick's diligence resulted in the successful filing of the bill amendment, which has since passed the House of Representatives and the Senate. We remain confident, thanks in considerable part to Kendrick's advocacy and research support, that our bill will reach the Governor's desk by the end of the legislative session.

Kendrick's academic and professional skills make him an exceptional candidate to serve as a clerk. He brings a wealth of professional and personal experience and a critical eye that will support you in reaching the most judicious outcome in your deliberations.

We welcome the opportunity to speak with you more about Kendrick's qualifications or the work we do in the Policy Advocacy Clinic. Thank you for your consideration of Kendrick's application. We could not recommend him more highly.

Sincerely,

/s Jeffrey Selbin

Jeffrey Selbin
Director
Policy Advocacy Clinic
University of California, Berkeley
School of Law

/s Cameron Clark

Cameron Clark - cclark@clinical.law.berkeley.edu

Cameron Clark
Clinical Supervising Attorney
Policy Advocacy Clinic
University of California, Berkeley
School of Law

/s/ Anavictoria Avila

Anavictoria Avila
Clinical Supervising Attorney
Policy Advocacy Clinic
University of California, Berkeley
School of Law

Cameron Clark - cclark@clinical.law.berkeley.edu

May 16, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write enthusiastically to support Kendrick Peterson's application to clerk in your chambers. Kendrick's drive, maturity, organization, and intellectual curiosity will make him an excellent law clerk.

As the Director of the Pro Bono Program at Berkeley Law, I have the great pleasure of working with hundreds of law students each year. The Pro Bono Program at Berkeley Law affords law students the opportunity to engage in meaningful client service under the supervision of licensed attorneys as early as their first semester of law school. Students can engage in direct service work on behalf of low-income clients, conduct research projects in furtherance of the public interest, or perform outreach and education of the community on their legal rights in a variety of substantive areas. Out of the thousands of pro bono students at Berkeley Law that I have worked with, Kendrick is at the very top of the list.

I first met Kendrick in the Fall Semester of his first year as a student at Berkeley Law. I was immediately impressed with his maturity and commitment to pro bono opportunities. As a first-year student, Kendrick joined two pro bono projects, the Tenants' Rights Workshop and the Berkeley Law Alternative Service Trip (BLAST) to Atlanta through which he would provide legal support to survivors of domestic violence. Through these projects, Kendrick learned client interviewing skills, counseled clients facing eviction and domestic abuse, drafted demand letters, prepared temporary restraining orders, and created access to the legal system to individuals who could not afford an attorney. Most importantly, Kendrick did all this work while displaying compassion and care for his clients.

It was clear from my early interactions with Kendrick that he would become one of my pro bono student leaders. Indeed he did. Kendrick is a born leader. This has been evident in the Pro Bono Program through my interactions with him, but also in his leadership of the California Law Review, as well as his service as President of the Student Association at Berkeley Law (SABL). Kendrick's work as a part of BLAST in Atlanta (lovingly dubbed, "BLASTLANTA") was transformative for him and he decided to co-lead the trip in his second year of law school.

As a BLAST co-leader, Kendrick secured the agreement of two legal services organizations, Atlanta Volunteer Lawyers Foundation and Kids in Need of Defense, to partner and supervise our students' legal work. Next, Kendrick and his co-leader recruited students to join him in the work. Kendrick's ability to connect and inspire his peers led to eight students committing their Spring Break to work full-time in Atlanta, Georgia, providing free civil legal services. Kendrick then conducted monthly meetings with his co-leader and eight students from September to March preparing his colleagues and himself so that they could be successful as soon as they landed in Georgia. He carefully selected readings, brought in expert speakers, and conducted trainings that students could immerse themselves in to understand the historical, political, and cultural dimensions of the work they would be doing. This group of ten students then provided free legal services for a full week over Spring Break, expanding the services to deserving clients and developing legal skills all the while.

Our BLAST leaders are given a great deal of responsibility. We entrust them with university resources, ask them to represent the law school in the community, and to serve as a mentor and guide to all the students on their trip. Kendrick stood out as my strongest leader this year. He was also dealt an unlucky blow, his co-leader developed COVID-19 one day into their BLAST trip. All of a sudden, Kendrick was leading the trip on his own. He shined. He communicated with me consistently throughout the trip when he should and managed independently as much as possible. The attorneys were thrilled with the work our students performed and the students came back more committed to public service than before they left. Out of the seven students eligible to do so, four applied to lead the trip next year. This is a testament to Kendrick's efforts.

At the beginning of my own legal career, I had the great pleasure of clerking for the Honorable Jeremy D. Fogel of the United States District Court for the Northern District of California. This experience taught me about the intellectual and personal qualities necessary to excel as a law clerk. Kendrick's work ethic, research and writing skills, self-motivation, and organization will make him an asset to chambers. Equally important, his kindness and good humor will make him a welcome colleague to both you and his co-clerks. I could not recommend Kendrick's application to be a clerk in your chambers more highly.

If I can be of any further assistance in your review of his application, please feel free to contact me.

Sincerely,

Deborah Schlosberg
Director, Pro Bono Program
UC Berkeley, School of Law

Deborah Schlosberg - dschlosberg@law.berkeley.edu - 510-664-4614

May 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to highly recommend Mr. Kendrick Peterson for a position as your law clerk. I have gotten to know Mr. Peterson well in the last year. He has been a student in two of my classes: Constitutional Law and Criminal Procedure: Investigations. In the 2022-23 school year, he was co-president of the student body, serving as co-president of Students at Berkeley Law (SABL). I have been very impressed by him and believe that he will have a great career in law.

Mr. Peterson was a frequent participant in class discussions in both classes. His comments were incisive and advanced the discussion. He is very adept at developing arguments to support his position and at disagreeing with other students in a respectful, substantive manner. He spoke openly of his perspective as a gay, Black man and that was important to the discussions both in discussing policing in Criminal Procedure and in considering equal protection in Constitutional Law.

My most extensive contacts with him were in his role of co-president of the law school's student government. We met on a regular basis, as well as when difficult issues arose. Unfortunately, it was a year with a number of sensitive, divisive issues. I was tremendously impressed by Mr. Peterson's responses to them. He was always willing to listen and reconsider his views. He exercised great common sense and good judgment, including sometimes doing what was politically unpopular. He was an effective advocate, developing strong arguments for his position. We sometimes disagreed, but he was never disagreeable and always respectful.

Mr. Peterson brings an upbeat, positive attitude to all he does. He is a true leader and very effective in working with people.

Finally, I want to address his grades. They are not the grades of those who I usually recommend for clerkships. Yet, having worked very closely with him, I have no doubt that he has the intellectual ability to succeed in the most demanding clerkship. He is smart, hardworking, and a pleasure to work with. I am very confident that he would do an excellent job as your law clerk.

Sincerely,

Erwin Chemerinsky

Erwin Chemerinsky - echemerinsky@law.berkeley.edu - 5106426483

BERKELEY LAW
LEGAL RESEARCH, ANALYSIS, AND WRITING PROGRAM
Kendrick Peterson
University of California, Berkeley, School of Law
Berkeley, California 94720
Telephone: (510) 555-3200
Facsimile: (510) 555-9366

Attorneys for Defendant
Federal Highway Administration

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WORKERS PROTECTION PROJECT,

Plaintiff,

v.

FEDERAL HIGHWAY
ADMINISTRATION,

Defendant.

Civil Action No. 21-CV-1836

**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT**

Professor: Linda Tam

Table of Contents

I. INTRODUCTION 1

II. STATEMENT OF THE FACTS 1

III. ARGUMENT 3

A. LEGAL STANDARD FOR SUMMARY JUDGMENT 3

B. THE REQUESTED INFORMATION FALLS UNDER EXEMPTION 6 OF THE FREEDOM OF INFORMATION ACT AND THEREFORE IS EXEMPT FROM RELEASE. 3

1. The video footage taken from the FHWA falls into the category of “similar files” and therefore satisfies the threshold test for the application of Exemption 6 of the FOIA. 5

2. The court should determine the video footage of the bridge collapse as implicating substantial privacy interests and choose not to disclose. 6

3. The Workers Protection Project has not demonstrated a public interest in disclosure beyond the previously released transcript. Therefore, the video should be exempt from disclosure. 9

4. In balancing the public interest of WPP with the private interest of protecting surviving family members, the Court should determine the privacy interest to outweigh the former. 14

IV. CONCLUSION 15

I. INTRODUCTION

The Federal Highway Administration (FHWA), through their objective of disseminating insightful perspectives on community infrastructure construction, and historic preservation, has

produced several videos to advance their mission. One of their videos details the implementation of the Competitive Highway Bridge program (CHBP) to restore the Caveman Bridge. Plaintiffs, Workers Protection Project (WPP), are a nonprofit agency that learned of the bridge's collapse via news outlets. Following the collapse, the WPP learned of the deaths of four construction workers and requested video footage of an interview conducted by FHWA representatives prior to the incident. Despite the Plaintiff Freedom of Information Act (FOIA) request being submitted, the video is prohibited from disclosure due to the statutory Exemption 6 which prohibits the release of information if it is determined that the files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Therefore, FHWA respectfully moves for summary judgment as to prohibit the video from disclosure and protect the surviving family members from being damaged via footage of their loved ones' final moments.

II. STATEMENT OF THE FACTS

The FHWA, a governmental organization committed to the restoration and preservation of the nation's roadways, has contributed over \$225 million in grants to support accessible travel networks. Dexter Decl. Ex. E. In efforts to disseminate the latest news and information on highway related events to the public as well as encourage utilization of resources, the FHWA established their own newsroom. Dexter Decl. ¶ 10.

Through an extensive campaign involving several videos explaining FHWA's methods, the organization established the "FHWA Works" series. Dexter Decl. ¶ 11. This series included pieces illuminating construction methods. Dexter Decl. ¶ 11. Along with videos that assist states in the reduction and elimination of traffic, the FHWA Office of Public Affairs decided to produce a series about the CHBP. Dexter Decl. ¶ 12. The CHBP's primary objective to assist

certain states in their efforts to replace and rehabilitate highway bridges, led to the FHWA's \$900,000 commitment to Oregon to rehabilitate the Caveman Bridge site. Dexter Decl. ¶ 15.

To discuss the great deal of imperative facts around bridge construction that the public may want to know, the FHWA produced an easily digestible video. Dexter Decl. ¶ 16. Outside of this video, to further bolster support for the project, the acting FHWA administrator elected to film a meeting with several construction workers. Dexter Decl. ¶ 18. Throughout this meeting all four workers discussed in extensive detail their personal lives. Dexter Decl. Exhibit E. This included their intimate history in relation to the bridge, family values, family's geographic location, wedding descriptions, and aspirations. Dexter Decl. Ex. E. The video concluded completely omitting any footage of the bridge collapse, and instead finished with a cinematographer committing to film other bridges in the near future. Dexter Decl. Ex. E. Approximately a half hour after the departure of the film crew, the bridge collapsed. Consequently, the collapse killed all four workers previously depicted in the video and left their aforementioned surviving family members without them. Dexter Decl. Ex. 18.

After the bridge collapse and subsequent media attention, the plaintiff learned of the tragedy. Immediately, petitioner sought the video footage of the workers' interview through a Freedom of Information Act (FOIA) request. Dexter Decl. Ex. A. The petitioners stated the disclosure of the video was to be for educational and advocacy purposes as well as to personify the victims. Dexter Decl. Ex. A. This request was then subsequently denied by the FHWA on August 2nd, 2021, due to the violation of the Exemption 6 provision of the statute. Dexter Decl. Ex. B

The plaintiff appealed this decision stating that the privacy interests of the construction workers lapsed with their deaths and was once again denied by FHWA. Dexter Decl. Ex. C.

Upon this denial however, the FHWA emphasized the availability of a transcript detailing every word stated within the video and provided the plaintiff with those materials. Dexter Decl. Ex. D. Despite the offerance of the transcript, the named plaintiffs in the case proceeded to request video footage of the deceased as well as their intimate conversations with FHWA representatives.

III. ARGUMENT

A. Legal Standard for Summary Judgment

For summary judgment to be permissible, there must be “no genuine dispute as to any material fact” and the movant must be entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When there are no genuine issues of material fact, the Court’s consideration of motions for summary judgment in light of Exemption 6 is appropriate. *New York Times Co. v. National Aeronautics & Space Admin.*, 782 F. Supp. 628. Routinely, courts deny a plaintiff’s summary judgment motion where Exemption 6 applies. *Id.* at 63

B. The requested information falls under Exemption 6 of the Freedom of Information Act and therefore is exempt from release.

Under the Freedom of Information Act (FOIA), an agency or governmental entity must disclose information requested by any person, unless the information falls under one of the many statutory Exemptions defined explicitly in the statute. *See* 5 U.S.C. § 552(d); *See Nat’l Ass’n of Retired Fed. Emp. v. Horner*, 879 F.2d 873-874 (D.C. Cir. 1989). One of these outlined Exemptions, Exemption 6, broadly protects files, beyond just a single medium, from disclosure if disclosure would constitute a clear invasion of personal privacy. 5 U.S.C. § 552(b)(6).

Both Exemption 6 and Exemption 7(c) have been used in cases involving privacy interests. Cases from Exemption 7(c) will be instructive in regard to the privacy inquiry, despite this Exemption being much broader. *Jud. Watch, Inc. v. DOJ*, 365 F.3d 1108, 1125 (D.C. Cir. 2004) at 1110. Exemption 7(c) essentially excuses from disclosure “records or information compiled for law enforcement purposes” if their production could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

Exemption 6 protects the release of information if it is determined that the files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Courts apply a four-part test to determine whether or not a governmental agency can protect information from disclosure. First, the court must determine if the information in question fits under the broad definition of personnel, medical or similar files. *Multi Ag Media LLC v. USDA*, 515 F.3d 1224 (D.C. Cir. 2008). Subsequently, courts determine if these files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). *Nat'l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, F.2d 319 (2004). Then courts must decide if the requester's high burden of evaluating whether there is a significant public interest is met. § 552(b)(7)(C). *Hertzberg v. Veneman*, 273 F. Supp. 2d 67 (D.D.C. 2003) at 70. And finally, the court must interpret that the public interest would outweigh the clear privacy interest that may be compromised by disclosure. *Nat'l Ass'n of Retired Fed. Emp. v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989).

The request by the WPP of the video footage, considering the video contains no content affiliated with the bridge collapse, falls under Exemption 6. This is due to the information's similarity to previously protected categories of information. Also, the video can be prohibited from disclosure due to the significant privacy interest implicated by the surviving family members. In addition, the low public interest in specifically the video disclosure after the release

of the transcript, allows FHWA to prohibit the video from disclosure. Finally in balancing that interest against the strong government interest in protecting survivors from extreme anguish, the FHWA shows that there is a stronger interest in prohibiting disclosure.

1. The video footage taken from the FHWA falls into the category of “similar files” and therefore satisfies the threshold test for the application of Exemption 6 of the FOIA.

Exemption 6 states that FOIA requests for disclosure do not apply for matters concerning personnel, medical, or similar files in which the disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6).

The information requested, rather than the nature of the files, is what courts have used to determine whether information falls under the “similar file” language. *New York Times Co. v. Nat'l Aeronautics & Space Admin* 920 F.2d 1002 (D.C. Cir. 1990.) In *New York Times Co. v. Nat'l Aeronautics & Space Admin* the court decided to look not to the nature of the files themselves, but rather to the nature of the information requested. *Id.* at 213. The court in its reasoning stated that information does not need to be intimate to satisfy the threshold requirement. Rather the threshold for application of Exemption 6 was crossed if the information merely applies to a particular individual. *Id.* at 213. In the NASA I case, the recorded tape of the Challenger astronauts in their final moments were considered to be similar files because the tape conveyed enough information to apply to particular individuals. *Id.* at 216.

As stated in the record, the video has a variety of points in which individuals can be identified. The video includes a brief conversation with several workers as well as the FHWA Deputy Administrator. Dexter Decl. ¶ 17. In addition, the record reflects that each of the four

deceased construction workers have surviving members of their family who would be able to identify their loved ones in the video. Dexter Decl. ¶ 22.

Given that the threshold of Exemption 6 only requires that information apply to a particular individual and the media in question includes four, the Exemption will apply.

2. The court should determine the video footage of the bridge collapse as implicating substantial privacy interests and choose not to disclose.

The court has defined a substantial privacy interest as one that includes “reasonable expectations of undisturbed enjoyment in the solitude and seclusion of [one's] own home” as well as info in which disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *NARFE*, 879 F.2d at 876; *see also* § 552(b)(6). Specifically, the court has stated that privacy protection extends to surviving family members and to overcome said privacy interests, the burden falls to the requestor. The requestor must produce evidence that would warrant belief by a reasonable person that government misconduct occurred. *Id.* at 167.

In *New York Times Co. v. Nat'l Aeronautics & Space Admin (NASA II)*, the court established that substantial privacy interests include “reasonable expectations of undisturbed enjoyment in solitude and seclusion of one’s own home.” 782 F. Supp. 628 (D.D.C. 1991) at 631. In *NASA II*, the court stated that given the demonstrated public and press interest in the tragedy, families faced potential assault on their privacy. *Id.* at 633. In particular, the court reasoned that the surviving families of the astronauts would likely be solicited about intimate details in response to their loved one’s deaths in a very public national tragedy. *See id.* Given the potential for an assault on personal privacy, the court reasoned that the NASA families had a substantial privacy interest.

In *Favish*, a case where a FOIA request was submitted for the death scene photographs of the president's deputy counsel, the court held that it was inconceivable that the government would intend a narrow definition of personal privacy. 541 U.S. 157 at 171. Specifically, the court reasoned information should not be obtained with no limitations at the expense of surviving members personal privacy. *See id.* The court emphasized that unlike previous cases, the right to personal privacy is not limited to just the decedent. *Id.* at 165. This is in part due to the family's own desire to "secure their own refuge from a sensation seeking culture" for their own peace, rather than that of the deceased. *Id.* at 166.

The surviving family members of the FHWA construction workers' privacy interests are covered by the exemption due to the intimate details within the video. In *NASA II*, the families of the astronauts' privacy interests were at issue. *See Id.* Specifically their privacy interests in relation to the intimate details regarding the voices of the astronauts. *Id.* at 632. The video in this case was a component of the "FHWA Works" video series that was being developed to educate the public about the work of FHWA Dexter Decl. ¶ 12. However, in this mission, the FHWA captured a recording of the workers discussing intimate details of their life. Dexter Decl. Ex. E. The petitioners also emphasize that if the FHWA video is to be obtained the intimate details will be discussed. Martinez Decl. 13. The use of intimate details to "put a face" on the lives lost in construction accidents every day, violates the privacy interests of surviving family members. Martinez Decl. 13. In *NASA II*, the court reasons that Exemption 6 is primarily meant to guard against unnecessary files that contain highly intimate details of a highly personal nature. 782 F. Supp. 628 (D.D.C. 1991) at 631. As shown by the transcript in Ex. E, the workers mention not only their extensive connections to the area but also a great deal about their heritage, aspirations, lineage, and personal lives. These details are extremely intimate and given the petitioner's

intention to use these details to personify the accident with recordings of the workers, the FHWA families have a right to protect from the disclosure. *See id.* Also as discussed in *Favish*, the court has a demonstrated interest in protecting the rights of surviving members' privacy interests. 541 U.S. 157, 124 S. Ct. 1570, 158 L. Ed. 2d 319 (2004) at 171. The court reasoned that this fact applied even when the information conveyed is not images of the family themselves. *See id.* The FHWA public works video does not directly show the conduct immediately before the bridge collapse or contain recordings from the family members themselves. However, the fact that it elicits additional anguish for surviving family members is enough to place their privacy interests within the scope of the exception. *See id.*

Courts reason that potential assaults on surviving family members by the media regarding their intimate details implicate a privacy interest. Immediately after the bridge collapse there was widespread coverage of the tragedy via a series of prominent news sources as well as a request from a family to reduce media coverage of a funeral. Martinez Decl. ¶ 7. This speaks directly to the significant level of media attention that persisted after the incident and continues to remain around the developing updates. Because the tape would implicate more than a de minimus privacy issue, meaning that the release of the tape would subject private individuals to a disruptive assault on their privacy, the tape should not be disclosed. *NARFE*, 879 F.2d at 878. Given that in *NASA II*, the families potential to be subjected to a barrage of telephone calls, mailings etc. was sufficient enough for the courts to find the families privacy interest substantial, the court should do the same in this case. *See* 782 F. Supp. 628 (D.D.C. 1991) at 633.

Given both the predicted media attention as well as the exposing of intimate details of the families, the court should determine the video footage of the bridge collapse as implicating substantial privacy interests and prohibit disclosure.

3. The Workers Protection Project has not demonstrated a public interest in disclosure beyond the previously released transcript. Therefore, the video should be exempt from disclosure.

A relevant public interest in the FOIA balancing analysis is one in which the disclosure of the information sought would shed light on the statutory actions of an agency or give additional insight into the aforementioned agency's operation. *See. U.S. Dep't of Defense v. FLRA*, 510 U.S. 487, (1994). Therefore a strong public interest exists when the media file in question will serve as the basis for government regulations, the cost and size of the video's production warrant government oversight and where there are legitimate questions of the methodology discussed in the video. *Advocates for Highway & Auto Safety v. Fed. Highway Admin.* 818 F. Supp. 2d 122 (D.D.C. 2011) at 126.

In *Advocates for Highway & Auto Safety v. Federal Highway Administration* the court ruled that the FHWA's decision to withhold videotapes requested under the FOIA was not permitted under Exemption 6 and there was a possible public interest in disclosure. 818 F. Supp. 2d 122, (D.D.C. 2011). The tapes at issue were components of a detailed research study examining truck driver's drowsiness on the road via "driver face" information. *Id.* at 124. The question presented before the court was whether or not there was a significant public interest in tapes in which there was no identifying information, but the driver's faces. *Id.* at 127. The court decided in this case that a public interest can exist in the videotapes when three standards are met. *Id.* at 126. The first being that there is a desire to examine the information in which governmental rules are based. *Id.* at 126. Given that this study was used to inform a series of Department of Transportation policies on service hours of drivers, a public interest was demonstrated. *Id.* at 126. Also, because the tapes played a small role in assisting the FHWA

create their own rules, the public has an interest in the content. *Id.* at 127. The second standard utilized in the plaintiff's public interest analysis is if disclosure of the media demonstrates how and why public funds are spent. *Id.* at 126. Since the study spanned over seven years and accrued a cost of 4.5 million in taxpayer dollars, the public interest in disclosure is clear. *Id.* at 127. Finally, a public interest is demonstrated where there is motivation in examining the methods in which the government produces data. *Id.* at 129. In this case, the plaintiff alleged that the study's methodology was flawed due to miscalculations across reports, despite the use of the same data source. *Id.* at 128. Also, the plaintiff called into question the subjectivity throughout the study. *Id.* 128. Compiling these protests together, there was a public interest demonstrated given the questions surrounding the validity of the study. *Id.* at 128.

In *Hertzberg v. Veneman*, the court evaluated whether or not the disclosure of wildfire prevention data would contribute significantly to public understanding of the operations or activities of government and therefore qualify as a public interest. 273 F. Supp. 2d 67 (D.D.C. 2003) at 85. In this case the Defendant utilized Exemption 6 to protect three categories of records. *Id.* at 85. The first being unredacted versions of witness statements of several citizens in which identifying details were redacted. *Id.* at 84. Second, the documents that utilized a "check mark" system to determine whether individuals had chosen to evacuate from the fires. *Id.* at 85. Then finally six videotapes taken by residents while in the process of evacuating. *Id.* at 85. In regard to the first medium of information, the court stated that the public interest to be considered was if the disclosure of this information advances the citizen's right to be informed about what their government is up to. *See. United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. at 773. Since the substantive content of the witness statements had already been communicated in previously released information, there was no

additional public interest in further disclosure. *Hertzberg*, 273 F. Supp. 2d 67 (D.D.C. 2003) at 88. Similarly, to the witness statements, the court found no additional reasoning for how the second media source (evaluation forms) would shed more light on government operations. *Id.* at 89. Consequently, the court determined there was no public interest and therefore there was no reason for disclosure. *Id.* at 88. The final piece of information, six videos taken by those witnessing the fire in their homes, was not decisively determined to have a public interest. *Id.* at 90. Instead, this information, which was non lexical in nature, had to be reviewed by the court or rather examined *in camera*. *Id.* at 89. This is primarily because the information was provided willingly and taken together the videos provide additional insight into the general operations of the government. *Id.* at 89. Specifically, the tapes would allow viewers to evaluate for themselves on how the agency responded and whether it failed to perform its official functions. *Id.* at 89. Despite this, the court noted plaintiff's argument that disclosing identifying information of the homeowners would assist in his investigation and serve a public interest was weak. This is because the link between the FOIA request and the "potential illumination of agency action" was far too murky.

In *NASA II*, the court expands upon the concept of marginal benefit being added by disclosing non lexical information on top of already existing lexical information. See *NASA II*, 920 F.2d 1002 (D.C. Cir. 1990). Specifically, the court stated this type of disclosure served no public interest. See *Id.* In this case, the plaintiff asserted that the public had a strong interest in disclosure because the non-lexical information was the "best available record of governmental activity aboard the Challenger shuttle" *Id.* at 633. The court was unconvinced of this argument because the plaintiff only provided mere speculation of the additional benefit provided by the voice inflections observable in the tape. *Id.* at 635. In addition, the court reasoned that even if

this mere speculation were true, such information would not contribute any additional knowledge to the public's understanding of NASA's operations as a whole. *Id.* at 635. Since the non-lexical information provided no additional insight on government operations disclosure was prohibited. *See id.*

Courts traditionally look to the video's purpose to serve as the basis for government regulations, the cost of the project depicted, and whether there are legitimate questions of the methodology to determine if a public interest exists in disclosure. In the case at hand, WPP explicitly seeks to obtain the non-lexical FHWA video footage despite the already provided transcript to "put a face on the lives lost in construction accidents every day." Martinez Decl. ¶ 13. The public interest asserted by the moving party is essentially to bolster their advocacy efforts by utilizing the personal information of each individual construction worker killed in the tragedy. Unlike the interest of promoting safe road travel and peer reviewing impactful conclusions via scientific study in *Advocates for Highway & Auto Safety*, there exists no relevant public interest on these grounds. *See*. 818 F. Supp. 2d 122, 124 (D.D.C. 2011). The petitioners explicitly seek to contextualize the individuals involved in the accident, and also may contend that the public will learn more about the FHWA's stated purpose through the video. Dexter Decl. ¶ 10-14. Given that WPP has expressed interest in information similar to that which was prohibited from disclosure in *Advocates for Highway & Auto Safety v. FHA*, there will not be a demonstrated public interest here. *See*. 818 F. Supp. 2d 122. In addition, though courts have ruled that there is a public interest in videos of projects with a significant amount of taxpayer expenditure, the video in contention today does not show details illuminating those fund allocations. *See. id.* The FHWA video only loosely depicts workers in the background and primarily focuses on the workers own personal perceptions of the project. Ex.E. Finally, the

methodology of the FHWA extensive infrastructure design is detailed heavily in materials already released to the public but is not illuminated by the video. *See*. Ex.E. That standard touched upon in *Advocates*, does not apply in this case. There is no allegations of clear scientific misconduct or suspect data, and therefore there is no demonstrated public interest. *See*. 818 F. Supp. 2d 122.

Similar to the facts presented in *NASA II*, even if the information that WPP is requesting does have an observable public interest, it would have to have not been met by the existing information already available to the public. 920 F.2d 1002 (D.C. Cir. 1990) at 1006. Ex. F and Ex. G, which contribute significantly to public understanding of the operations or activities of government as discussed in *Hertzberg*, are more than sufficient to satisfy the public interest. 273 F. Supp. 2d 67 (D.D.C. 2003) at 85. In addition, the construction sounds, and the faces of the deceased are not a needed component to better understand FHWA operations. Thus, the case at hand sharply contrasts the non-lexical information disclosed in *Hertzberg*. *Id.* at 85. There is no marginal benefit to releasing the video given the already existing transcript outlined in Exhibits within the record and the extensive information provided by the video. FHWA Works “Caveman Bridge Rehabilitation Project”, <https://www.youtube.com/watch?v=itvuzuw10Kc>. (Last visited Feb. 19, 2022).

The WPP has not demonstrated a minimal public interest in accessing the non-lexical media beyond the previously released transcript and therefore the video should be exempt from disclosure.

4. In balancing the public interest of WPP with the private interest of protecting surviving family members, the Court should determine the privacy interest to outweigh the former.

The standard for balancing the public and private interest weighs in favor of the disclosure, unless the privacy interest is substantial, the public interest is not clearly defined, and the agency has released information fulfilling the request. *See. Ripskis v. Dep't of Hous. & Urb. Dev.*, 746 F.2d 1 (D.C. Cir. 1984). The Court balances these competing interests in deciding if the disclosure of the media would constitute a clearly unwarranted invasion of personal privacy. *NASA II*, 782 F. Supp. 628 (D.D.C. 1991) at 630.

In *NASA II*, the court utilized a balancing test to determine that disclosure of a tape exposing the audio of the Challenger astronauts before the explosion of their flight craft and subsequent deaths had a significant privacy interest outweighing the public interest in disclosure. *Id.* at 631.

As in *NASA II*, this Court is asked to balance the privacy interests of non-lexical information that has already been released in a lexical format against a speculative public interest in disclosure. *Id.* at 632. Through the transcript in Ex. E, FHWA has pointed to the workers mentions of not only their extensive connections to the area but also a great deal about their heritage, aspirations, lineage and personal lives, there is an established substantial privacy interest. *See. id.* Just as in *NASA II*, the demonstrated privacy interest of surviving family members in not having to be solicited due to intimate details shown by the video's disclosure is strong. *See id.* However, the petitioners explicitly stated public interest, as well as any conceivable public interest shown by disclosure is not. *See. Martinez Decl.* 13. The petitioners fail to show how the video clarifies an existing error in methodology, helps taxpayers understand

allocation of funds, and how content solely in the video serves as the basis for policy. Therefore, the WPP interest is met with the extensive amount of lexical information provided. *See*. Dexter Decl. ¶ 10-14.

Given the de minimis public interest of WPP and the substantial privacy interest of protecting surviving family members, the Court should determine the privacy interest to outweigh the former.

IV. CONCLUSION

Plaintiff WPP issued a Freedom of Information Act (FOIA) request to obtain the video depicting FHWA workers prior to the bridge collapse. Despite this request, the video is prohibited from disclosure due to statutory Exemption 6 which prohibits the release of information if it is determined that the files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Because the video constitutes a similar file covered by the FOIA statute, there is no demonstrated public interest in disclosure of the video, and there is a substantial privacy interest being implicated by the video's release, it is within the FHWA's authority to prohibit the video's release. As such, the Defendant, FHWA respectfully requests that the court deny plaintiff's motion for summary judgment.

Respectfully Submitted,

/s/ Kendrick Peterson
Counsel for Defendant
Federal Highway Administration (FHWA)

Applicant Details

First Name	William
Last Name	Petro
Citizenship Status	U. S. Citizen
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Contact Phone Number	8134512000

Applicant Education

BA/BS From	University of Florida
Date of BA/BS	May 2020
JD/LLB From	Duke University School of Law
	https://law.duke.edu/career/
Date of JD/LLB	May 11, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Duke Law Journal
Moot Court Experience	Yes
Moot Court Name(s)	

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Will Petro
1420 Broad St
Durham, NC 27705

June 9, 2023

The Honorable Jamar K. Walker
United States District Court for the
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I write to express my sincere interest in clerking for your chambers for the 2024–25 term. I am a second-year law student at Duke Law, and I expect to graduate in May of 2024. Virginia is a special place to me. It is the centerpoint of my East Coast family and the location of most of our gatherings. I hope to live by my family, and I intend to remain and practice in the area.

As your clerk, I would bring an open mind and an eye for detail to each assignment. My Cuban-American upbringing instilled in me a strong interest in the law as a force for public good. Starting in college, I applied insights from economics and psychology to produce research on topics such as tort reform and criminal sentencing. In law school, I have sought opportunities to hone this multidisciplinary approach and further develop my writing skills.

My role as Executive Editor for the Duke Law Journal satisfies both objectives. It has given me the opportunity to support legal scholarship both in selecting pieces for publication and in editing these pieces line-by-line. Yet my most meaningful experiences have come from pro bono and government work, including with the Duke Law Innocence Project and the Federal Trade Commission. These experiences have culminated in an affinity for public service in challenging areas of law, such as the intersection of antitrust and technology.

Attached please find my resume, unofficial Duke Law transcript, and writing sample. Letters of recommendation from Professors H. Jefferson Powell, Ehud Guttel, and Barak Richman are included. I would be happy to provide any additional information you require. Thank you.

Sincerely,

Will Petro

1420 Broad Street
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WILL PETRO
william.petro@duke.edu
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2535 Cedar Cypress Ct
Tampa, FL 33618

EDUCATION

Duke University School of Law, Durham, NC

Juris Doctor expected, May 2024

GPA: 3.76

Honors: Duke Law Journal, *Executive Editor*
Moot Court, *Board Member and Duke Jessup Cup Finalist*
Dean's Award, *Constitutional Law (Professor Powell)*

Activities: Duke Law Competition Law Society, *Co-President*
Duke Law ACLU, *Treasurer*
Duke Law Innocence Project, *Senior Case Manager*
Duke Latin American Law Students Association

University of Florida, Gainesville, FL

Bachelor of Arts in Economics, *summa cum laude*, May 2020

Bachelor of Science in Psychology, Behavior Analysis, May 2020

Minor in Business Administration

GPA: 3.78

Honors: Florida Blue Key
Dean's Medal for Excellence in Liberal Arts and Sciences

Thesis: *Determinants of State Healthcare Spending: An Analysis of Limits on Medical Malpractice Damages*

Activities: Student Government, *Director of Finance*
Bob Graham Center for Public Service, *Student Fellow*

EXPERIENCE

Covington & Burling LLP, Washington, D.C.

Summer Associate, May 2023 – Present

- Wrote memoranda on topics including antitrust, employment law, and class action litigation.
- Researched orders regarding resentencing motions for a pro bono criminal justice project.

Federal Trade Commission, Bureau of Competition, Washington, D.C.

Legal Intern, Technology Enforcement Division, June 2022 – July 2022

- Researched and wrote memoranda on antitrust and procedural topics related to “Big Tech.”
- Conducted document review to assist attorneys with ongoing litigation.

Fernandez & Alvarez PA, Tampa, FL

Undergraduate Intern, June 2019 – August 2019

- Drafted complaints, subpoenas, and other documents under the supervision of practicing attorneys.
- Shadowed attorneys during court proceedings in matters of both criminal and civil law.

University of Florida Student Legal Services, Gainesville, FL

Research Intern, June 2018 – August 2018

- Manually collected data on five hundred felony cases in Alachua County court records from 2017.
- Analyzed data to identify sentencing trends based on factors including race and gender.

ADDITIONAL INFORMATION

Enjoy guitar, chess, and Tampa sports. Trained boxing under a Marine Corps Boxing Hall-of-Famer.

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**UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW**

2021 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Civil Procedure	Levy, M.	3.9	4.50
Criminal Law	Coleman, J.	3.3	4.50
Torts	Guttel, E.	3.9	4.50
Legal Analysis, Research, Writing	Hanson, M.	<i>Credit Only</i>	0.00

2022 WINTERSESSION

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Legal and Policy Aspects of U.S. Civil-Military Relations	Dunlap, C.	CR	0.50

2022 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Constitutional Law	Powell, J.	4.2	4.50
Contracts	Aguirre, E.	3.2	4.50
Property	Bradley, K.	3.5	4.00
Legal Analysis, Research, Writing	Hanson, M.	3.8	4.00

2022 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Ethics and the Law of Lawyering	Richardson, A.	3.6	2.00
Evidence	Beskind, D.	4.1	4.00
First Amendment	Benjamin, S.	3.3	3.00
Corporate Crime	Buell, S.	3.8	4.00

2023 WINTERSESSION

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Internal Investigations	McDowell, V.	CR	0.50

Compliance with the Foreign Corrupt Practices Act	Zuercher, B.	CR	0.50
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2023 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Administrative Law	Benjamin, S.	3.7	3.00
Antitrust	Richman, B.	4.0	4.00
Introduction to Law & Economics	Guttel, E.	4.2	3.00
Constitutional Law II: Cases and Controversies	Powell, J.	4.0	2.00
Antitrust Course Plus	Richman, B.	CR	0.50
Independent Study	Buell, S.	CR	2.00

TOTAL CREDITS: 59.5

CUMULATIVE GPA: 3.76

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

I write to recommend Will Petro for a clerkship in your chambers. Will was a student in my Spring 2023 Antitrust class, in which he excelled. He earned a 4.0, which was the second-highest grade in the class, but his success was not a surprise. Will has impressed me throughout the year, and I expect him to be both a terrific clerk and an outstanding attorney.

I first met Will when he asked me to participate in some events for the Competition Law Society. The student group had been rather dormant in recent years, but Will injected new life and deep intellectual curiosity into its 2022-23 programming. He impressed me with both his energy and his commitment in producing quality events.

The same energy was reflected in Will's active participation in class discussions. He was consummately prepared, and he consistently articulated his ideas with impressive clarity. More significant, Will exhibited a real maturity in his engagement with antitrust law. He showed himself to be not just a diligent student but a budding professional who had a pointed interest and dedication in mastering antitrust law. I expect Will to continue shining as an antitrust attorney, and I will watch his career develop with interest.

For these reasons, Will would be a terrific clerk. He is mature, meticulous, and deeply dedicated to his work. He will execute his responsibilities to the fullest, and he will be an eager team player in your chambers. He will readily earn your trust, and you will be impressed with his abilities and his dedication to the task at hand.

In short, I hope you consider Will for a position in your chambers. I recommend him with genuine enthusiasm.

Sincerely yours,

Barak D. Richman
Edgar P. and Elizabeth C. Bartlett Professor of Law
Professor of Business Administration

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

I am delighted to write this letter of recommendation in support of Mr. William Petro's clerkship application. Mr. Petro was a student in my Torts class (Fall 2021). He impressed me as an extremely talented student. I was therefore very pleased to find out that he decided to apply for a judicial clerkship.

From the very beginning of the semester, Mr. Petro's class performance captured my attention. His answers to my questions were always supported by careful legal analysis. He was always on point and expressed his views clearly and concisely. Throughout the course, the other students and I tremendously benefited from Mr. Petro's participation and his original and illuminating contributions. I was thoroughly impressed by his ability to understand and analyze complex legal questions and his exceptional critical thinking. He received an "A" in my class—an excellent grade, which he clearly deserved. This semester, Mr. Petro is taking part in another course that I teach (Introduction to Law and Economics). In this course as well, Mr. Petro's performance stands out, and he is among the top students in class.

Mr. Petro's achievements in my classes follow his achievements prior to law school. In addition to his excellent academic accomplishments, he already gained significant experience as a legal intern, working, inter alia, for the Federal Trade Commission, a Tampa-based private law firm, and the University of Florida Student Legal Services.

Based on his performance in my class, as well as in other classes at Duke, it is amply clear that Mr. Petro is a very capable person with a gift for legal thinking. He is also a very responsible and thoughtful person. He is well liked and respected by his fellow students. By all indications I have, Mr. Petro is an excellent candidate for a judicial clerkship. He has the right attitude and the complete toolkit necessary to be a great legal intern. I believe that he will be an invaluable addition to any chambers. If you have any questions or need additional information, please do not hesitate to contact me by phone ((919) 613-8520) or by email (guttel@law.duke.edu).

Respectfully,

Ehud Guttel
Visiting Professor of Law

Ehud Guttel - guttel@law.duke.edu - 919-613-8520

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

William Petro has asked me to write in support of his application to you for a clerkship. Mr. Petro took the introductory course in constitutional law with me in his first year and was a student in a seminar I taught this spring semester, so I know him reasonably well. His work is consistently superior, even when compared with very able classmates, and I am confident he would bring the same ability and energy to a clerkship. I recommend him to you with great enthusiasm.

In the spring semester 2022, I had ninety-six students in Constitutional Law I. As I teach it, the great majority of class meetings in that course involve students arguing different sides of a case or issue, so that at any given time the student who has the floor is responding not only to my questions, but also to classmates' arguments. Given the size of the class that spring, I assigned each student a single assignment for which he or she had primary responsibility. As is almost always true (regardless of class size), there were numerous opportunities for students to answer questions stumping the day's presenter and to contribute to the discussion in other ways. From the start, Mr. Petro was a steady, reliable contributor, obviously prepared and insightful, and ready to contribute when I threw out a question to the class. I expected that he would do well on the final examination, although of course such expectations do not always turn out to be correct.

Despite the importance of the classroom work, the final grade in Constitutional Law I is based primarily on the final examination, which I blind grade, and only after those scores are set do I learn the students' identities. Mr. Petro's answers were outstanding, both in his accuracy of analysis and in the thoughtful ways he handled issues for which strong arguments could be marshaled on either side. There were a couple of other extremely strong exams in a class that was, as a group, impressive, but I thought Mr. Petro clearly deserved the extremely high grade that secured him the Dean's Award for the course.

The seminar I taught this spring semester is called Constitutional Law II: Historic Cases and Contemporary Controversies. The students and I read eighteenth and nineteenth century materials, mostly but by no means all of them cases, and almost none of which the students would encounter in any other course. The objective is to develop some sense of how the constitution developed in its first century, and to reflect on how what we read may shed light on contemporary issues. As with any seminar, classroom participation is an important aspect of the class and of the final grade. Mr. Petro was an excellent contributor, and his seminar paper, "Neglected History in the Patent-Antitrust Debate: The Rise, Fall, and Revival of the Canon of Strict Construction," was a highly sophisticated, surefooted, and insightful examination of the interplay between legal hostility to monopolies and patent law from the English background through *FTC v. Actavis* in 2013. The paper is outstanding student work – as well written as it is analytically sound – and deserves publication. Again, Mr. Petro received the highest grade in the class.

I've spent enough time with Will Petro during office hours to have a good sense of his personality. He is serious, studious, mature, and genuinely passionate about the law. If I were involved in hiring for a government law office, as I have been several times in the past, he would be exactly the kind of person I would hope for us to hire. I strongly support his application for a clerkship, and I would be delighted to discuss him with you or someone else in your chambers if that would be of assistance.

Respectfully yours,

H. Jefferson Powell
Professor of Law

Jeff Powell - POWELL@law.duke.edu - 202-994-4691

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Writing Sample

The following is an unedited memorandum I wrote as a summer law clerk for the Federal Trade Commission. I have been given express permission to use it as a writing sample. In the memorandum, I was asked to discuss hypothetical proof requirements for plaintiffs under Section 2 of the Sherman Act. Factual context has been omitted to preserve confidentiality.

MEMORANDUM

To: [redacted]
From: Will Petro
Date: July 27, 2022
Re: Required Proof of Harm for Section 2 Monopoly Maintenance Claims

QUESTION PRESENTED

Does a plaintiff need to prove the competitive dynamics of a hypothetical market—one that would exist but for the defendant’s conduct—to establish the anticompetitive conduct element of a Sherman Act § 2 monopoly maintenance claim?

BRIEF ANSWER

Most likely no. Courts frequently infer anticompetitive effect from other forms of evidence. Some authorities presume that certain types of conduct are anticompetitive. Others will infer harm from evidence of intent. Most will accept purely historical evidence. However, courts have varied in their proof requirements.

DISCUSSION

Monopoly maintenance claims generally do not require proof of hypothetical markets’ competitive dynamics. Section 2 of the Sherman Act prohibits the monopolization of trade. 15 U.S.C. § 2. The offense consists of two elements: “(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966). In other words, “the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct*.” Verizon Commc’ns, Inc. v. Law Offs. of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).

Courts also describe this prohibited conduct as “exclusionary.” See, e.g., United States v. Microsoft Corp., 253 F.3d 34, 58 (D.C. Cir. 2001) (“A firm violates § 2 only when it acquires or maintains . . . a monopoly by engaging in exclusionary conduct . . .”). “Exclusionary conduct” is “conduct, other than competition on the merits or restraints reasonably ‘necessary’ to competition on the merits, that reasonably appears capable of making a significant contribution to creating or maintaining monopoly power.” Barry Wright Corp. v. ITT Grinnell Corp., 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (quoting 3 Phillip E. Areeda & Donald F. Turner, Antitrust Law ¶ 626 (1978)). In Microsoft, the D.C. Circuit held that, “to be condemned as exclusionary, a monopolist’s act must have an ‘anticompetitive effect,’” meaning that it “must harm the competitive *process* and thereby harm consumers.” Microsoft, 253 F.3d at 58.

Under the framework established in Microsoft, the plaintiff carries the burden of proving that the defendant’s conduct “has the requisite anticompetitive effect.” Id. at 58–59. The burden then shifts to the defendant to “proffer a ‘procompetitive justification’ for its conduct.” Id. at 59. Finally, the plaintiff must show that the harms of the conduct outweigh any benefits under an analysis akin to the “rule of reason.” Id.

Some landmark § 2 cases have dispensed with the anticompetitive conduct element in relatively perfunctory fashion. See, e.g., Grinnell, 384 U.S. at 571 (“We shall see that this second ingredient presents no major problem here, as what was done in building the empire was done plainly and explicitly for a single purpose.”). Other cases have required much more substantial evidence of anticompetitive effect. See, e.g., FTC v. Qualcomm Inc., 969 F.3d 974, 990 (9th Cir. 2020). These cases reflect an ongoing divide in the modern case law.

I. Some authorities hold that certain types of conduct are presumptively anticompetitive.

One approach simply presumes that certain types of conduct are anticompetitive. For instance, some courts interpret Grinnell to hold that acquisitions of competitors may be presumptively anticompetitive. See, e.g., BRFHH Shreveport, LLC v. Willis Knighton Med. Ctr., 176 F. Supp. 3d 606, 622 (W.D. La. 2016) (“[T]he language in Grinnell suggests that acquisitions of viable competitors alone may establish the anticompetitive conduct element of a section 2 claim.”); Clean Water Opportunities, Inc. v. Willamette Valley Co., 759 Fed. Appx. 244, 247 (5th Cir. 2019) (per curiam). Leading legal treatises also promote the use of presumptions in various contexts. See, e.g., Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application ¶ 701 (4th ed. 2020) (hereinafter Hovenkamp, Antitrust Law).

In Grinnell, the defendants’ conduct included restrictive agreements that preempted competition in certain markets, anticompetitive pricing practices, and acquisitions of competitors. Grinnell, 384 U.S. at 566–70. The Supreme Court regarded each form of conduct, individually, as an “unlawful and exclusionary practice[.]” See id. at 576 (“The restrictive agreements . . . were one device. Pricing practices that contained competitors were another. The acquisitions . . . were still another.”). The Court explained that the acquisitions, in particular, “eliminated any possibility of an outbreak of competition that might have occurred.” Id. It did not require proof, for example, that the acquired competitors would have affected prices, output, or the quality of services in the relevant markets. See id.

In their treatise on antitrust law, Areeda and Hovenkamp delineate the circumstances under which mergers are, or should be, presumptively anticompetitive. See Hovenkamp, Antitrust Law, ¶ 701. The treatise notes that, “[h]istorically and today, merging viable

competitors is a clear § 2 offense,” and that the acquisition “of an actual or likely potential competitor is properly classified as anticompetitive.” *Id.* ¶ 701a. It further suggests that “a monopolist’s acquisition of a ‘likely’ entrant into the market in which monopoly power is held is presumptively anticompetitive.” *Id.* ¶ 701d. Indeed, it proposes “a relatively severe approach to holders of significant monopoly power” under which “the acquisition of any firm that has the economic capabilities for entry and is a more-than-fanciful possible entrant is presumably anticompetitive.” *Id.* (noting a single exception where “the acquired firm is no different in these respects from many other firms”). The authors caution, however, that this approach should not affect the scope of equitable relief granted. *Id.* ¶ 701j; *see also* *Microsoft*, 253 F.3d at 80 (“Absent some measure of confidence that there has been an actual loss to competition that needs to be restored, wisdom counsels against adopting radical structural relief.”).

If a defendant’s conduct is presumptively anticompetitive, it follows that evidence of the conduct itself obviates further proof requirements, including proof of anticompetitive effect. Under *Microsoft*’s burden-shifting approach, however, courts might still allow defendants opportunities to rebut such presumptions. *See Microsoft*, 253 F.3d at 59. If so, plaintiffs likely would still need to provide evidence of harm to competition to demonstrate that this harm outweighs any procompetitive benefits. *See id.*

II. Most authorities do not require evidence of a hypothetical “but-for” market to prove anticompetitive effects.

Even if a court does not presume that a defendant’s conduct is anticompetitive, it may accept evidence of harm other than that of a hypothetically reconstructed market. Indeed, most courts appear willing to infer harm to competition from more retrospective evidence. *See, e.g.,*

United States v. Dentsply Int'l, Inc., 399 F.3d 181, 191–96 (3d Cir. 2005); McWane, Inc. v. FTC, 783 F.3d 814, 837 (11th Cir. 2015).

For instance, a court may credit evidence that a defendant's conduct limited consumer choice. See Dentsply, 399 F.3d at 194. In Dentsply, the defendant required dealers to whom it sold its dental products to refrain from offering rival product lines. Id. at 185. The Third Circuit required that the government prove that the defendant's market power "was used 'to foreclose competition.'" Id. at 191 (quoting United States v. Griffith, 334 U.S. 100, 107 (1948)). It explained that "[t]he test is not total foreclosure, but whether the challenged practices bar a substantial number of rivals or severely restrict the market's ambit." Id. (citing LePage's Inc. v. 3M, 324 F.3d 141, 159–60 (3d Cir. 2005); Microsoft, 253 F.3d at 69). The court did not require proof that alternative means of competition were impossible, but merely that they were impractical or ineffective. See id. at 193.

Moreover, the court's analysis appeared to equate the defendant's exclusion of rivals with "harm to competition" itself. See id. at 191. Indeed, its discussion focused primarily on rivals' loss of access to the market. See id. ("[The conduct] helps keep sales of competing teeth below the critical level necessary for any rival to pose a real threat to [the defendant]'s market share. As such, [the conduct] is a solid pillar of harm to competition."). The court identified the subsequent limitation of consumer choice as "[a]n additional anti-competitive effect." Id. at 194. It credited evidence that end-users requested alternative product lines, but that dealers were unable to comply due to the defendant's conduct. Id. This evidence, coupled with the effective exclusion of competitors, was sufficient to prove anticompetitive effect. Id. at 191–96.

At minimum, courts do not require definitive proof of harm. See McWane, 783 F.3d at 838–40. In McWane, the defendant implemented an exclusive dealing arrangement in response

to a competitor's entry into the domestic pipe fittings market. Id. at 820–21. It argued that the government “did not prove harm to competition with sufficient certainty.” Id. at 836. The Eleventh Circuit noted that “[t]he governing Supreme Court precedent speaks not of ‘clear evidence’ or definitive proof of anticompetitive harm, but of ‘probable effect.’” Id.

The court inferred that the defendant's prices were supracompetitive by comparison with the market for imported fittings. Id. at 838. These prices did not fall even in states where a competitor entered the market. Id. at 838–39. The defendant argued that this evidence was insufficient to prove that the conduct caused the price behavior. Id. at 839. The court held that, “[w]hile it is true that there could have been other causes for the price behavior, the government need not demonstrate that the [conduct] was the sole cause.” Id.

In other words, the court was willing to infer harm to consumers based on the market conditions at present. See id. Such an inference would be inconsistent with any requirement that plaintiffs prove, for instance, that a competitor would have succeeded in driving down prices in a market absent the defendant's conduct. These cases illustrate the successful use of historical evidence, unlike that of a hypothetical “but-for” market.

III. Some authorities allow inferences of harm from evidence of intent.

Evidence of intent might also obviate the need for additional proof of harm. Intent has consistently played some role in antitrust law. See, e.g., Bd. of Trade of City of Chi. v. United States, 246 U.S. 231, 238–39 (1918); Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 602–03 (1985). Early in the history of antitrust jurisprudence, the Supreme Court identified “[t]he history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, [and] the purpose or end sought to be attained,” all as “relevant facts.” See Bd. of Trade, 246 U.S. at 238. While not dispositive, “knowledge of intent may help the court to

interpret facts and to predict consequences.” Id. In monopolization cases, intent is “relevant to the question whether the challenged conduct is fairly characterized as ‘exclusionary’ or ‘anticompetitive.’” Aspen Skiing Co., 472 U.S. at 602.

More recent cases illustrate the role of intent in the § 2 context. In McWane, the Eleventh Circuit relied on earlier case law to conclude that “the clear anticompetitive intent behind the [defendant’s conduct] also support[ed] the inference that it harmed competition.” McWane, 783 F.3d at 840. The court highlighted testimony from the defendant’s executives indicating that its conduct was deliberately intended to “prevent [its competitor] from ‘reach[ing] any critical market mass that w[ould] allow them to continue to invest and receive a profitable return.’” Id. “Although such intent alone is not illegal,” the court held that “it could reasonably help the Commission draw the inference that the witnessed price behavior was the (intended) result of the [defendant’s conduct].” Id. In other words, evidence of intent can allow adjudicators to infer that the defendant’s conduct caused harm. See id.

In Microsoft, the D.C. Circuit noted that a court’s proper focus in § 2 cases “is upon the effect of th[e defendant’s] conduct, not upon the intent behind it.” Microsoft, 253 F.3d at 59. However, it acknowledged that evidence of intent can help courts “understand the likely effect of the monopolist’s conduct.” Id. (citing Bd. of Trade, 246 U.S. at 238). Indeed, the court used this evidence to characterize the defendant’s communications to another company as exclusionary threats. See id. at 77–78.

The defendant, Microsoft, was concerned that the creation of cross-platform interfaces would undermine its monopoly in the operating systems market. Id. at 77. Microsoft made repeated comments criticizing Intel’s development of a Windows-compatible Java Virtual Machine. Id. After Microsoft insinuated that it would provide support to one of Intel’s rivals,

Intel discontinued its efforts. Id. The court noted that “Microsoft’s internal documents and deposition testimony confirm[ed] both the anticompetitive effect and intent of its actions.” Id. While not explicit, the court seemingly used this evidence of intent to refute the defendant’s claim that the communications were merely advisory. See id. (noting that the defendant “lame[ly] characterize[d] its threat to Intel as ‘advice’”). The difference in characterization was apparently relevant to the conclusion that the defendant violated § 2. See id. at 77–78. While the role of intent in § 2 cases is not precisely delineated, the use of intent evidence is inconsistent with a requirement that plaintiffs prove harm in the “but-for” world.

IV. Other authorities apply more demanding inquiries of harm to competition.

Not all courts appear willing to infer harm to competition from the same types of evidence. Some cases, especially at the intersection of antitrust and patent law, have demanded atypical forms of proof. See, e.g., Rambus Inc. v. FTC, 522 F.3d 456, 463–67 (D.C. Cir. 2008); Qualcomm, 969 F.3d at 990–91.

In some instances, courts may explicitly require evidence related to hypothetical market conditions absent the defendant’s conduct. See Rambus, 522 F.3d at 464–65. In Rambus, the Federal Trade Commission, following administrative proceedings, determined that the defendant had failed to disclose its patent interests in technology adopted by a private standard-setting organization (“SSO”). Id. at 461. The FTC found that, but for the defendant’s deceit, the SSO would have either excluded the patented technologies from its standards or demanded assurances of fair, reasonable, and nondiscriminatory (“FRAND”) license fees. Id. However, in its remedial opinion, the FTC noted insufficient evidence that the SSO would have adopted other technologies. Id. at 462. Furthermore, the defendant argued that the FTC’s alternative finding did not actually involve an antitrust violation. Id.

The D.C. Circuit agreed. Id. It held that, “[e]ven if deception raises the price procured by a seller, but does so without harming competition, it is beyond the antitrust laws’ reach.” Id. at 464. The court found that the failure to secure FRAND commitments did not constitute harm to the competitive process itself and, therefore, did not violate antitrust law. See id. at 466. It also noted that, if the SSO, “in the world that would have existed but for [the defendant]’s deception, would have standardized the very same technologies,” the deception could not have caused harm to competition. Id. at 466–67. Therefore, the FTC needed to prove, with some measure of likelihood, that the SSO would have adopted competitors’ technologies as standards. See id.

Courts may also distinguish harm to consumers from harm to competition, thereby enhancing proof requirements. See Qualcomm, 969 F.3d at 990. In Qualcomm, the Ninth Circuit held that “[a]llegations that conduct ‘has the effect of reducing consumers’ choices or increasing prices to consumers do[] not sufficiently allege an injury to competition . . . [because] [b]oth effects are fully consistent with a free, competitive market.” Id. (alteration in original) (quoting Brantley v. NBC Universal, Inc., 675 F.3d 1192, 1202 (9th Cir. 2012)). Rather, the plaintiff must prove that these harms “are the result of a less competitive market due to either artificial restraints or predatory and exclusionary conduct.” Id. (citing Ohio v. Am. Express Co., 138 S. Ct. 2274, 2288 (2018)). The court cautioned that “novel business practices—especially in technology markets—should not be ‘conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.’” Id. at 990–91 (citing Microsoft, 253 F.3d at 91).

The government alleged that several of the defendant’s practices caused harm to competition in the modem chip markets. Id. at 986. The district court agreed, focusing much of its analysis on purported harms to original equipment manufacturers (“OEMs”). Id. at 992. The

Ninth Circuit criticized these findings, emphasizing that the OEMs were the defendant's customers, not competitors. See id. The court found that "[t]hese harms, even if real, [we]re not 'anticompetitive' in the antitrust sense . . . because they d[id] not involve restraints on trade or exclusionary conduct in 'the area of effective competition.'" Id. (citing Am. Express, 138 S. Ct. at 2285). This characterization of direct customers as outside of the relevant market appears to contradict other cases which posit consumer harm as a primary concern of the antitrust laws. See, e.g., Microsoft, 253 F.3d at 58 (equating "anticompetitive effect" with conduct that "harm[s] the competitive *process* and thereby harm[s] consumers"). It is unclear whether this point was essential to the outcome of the case. See Qualcomm, 969 F.3d at 992 (assuming, without explicitly accepting, that the harms to OEMs were "real"). Nevertheless, prospective plaintiffs should be aware that the same standards of proof are not universally applied.

CONCLUSION

Plaintiffs likely do not need to prove the competitive dynamics of a hypothetical market to establish the anticompetitive conduct element of a § 2 monopoly maintenance claim. Prospective plaintiffs should be aware, however, that courts apply varying standards of proof.

Applicant Details

First Name	Madison
Last Name	Phillips
Citizenship Status	U. S. Citizen
Email Address	madisonphillips@uchicago.edu
Address	<div> Address Street 9705 Hidden Valley Road City Vienna State/Territory Virginia Zip 22181 Country United States </div>
Contact Phone Number	7039537161

Applicant Education

BA/BS From	Brown University
Date of BA/BS	May 2018
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 3, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Chicago Journal of International Law
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
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Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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Huq, Aziz
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773-702-9566
Ginsburg, Thomas
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Madison A. Phillips
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Vienna, VA 22181
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April 30, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I am strongly interested in clerking for you because of the opportunity to contribute directly to the day-to-day functioning of our legal system and to learn about it from your point of view as a judge. I am also very interested in clerking in my home state of Virginia, where I was born and raised.

My resume, writing sample, and law school transcript are enclosed. The pending grades on my transcript will be posted by the end of May 2023. I will forward my updated transcript when the grades are posted. My letters of recommendation will arrive under separate cover and are from Professors Curtis A. Bradley, Thomas Ginsburg, and Aziz Huq.

Please let me know if you require additional information.

Sincerely,



Madison A. Phillips

Madison A. Phillips

9705 Hidden Valley Road, Vienna, VA 22181 • (703) 953-7161 • madisonphillips@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, IL

J.D. with Honors, June 2023

- Journal: *Chicago Journal of International Law* (CJIL), Comments Editor
- Proposed the selected topic of CJIL's 2023 Symposium, *Free Speech*

Brown University, Providence, RI

B.A. in Political Science, International Relations and Comparative Politics track, May 2018

- *The Critical Review*, Editor-in-Chief

EXPERIENCE

Eviction Legal Helpline, Virginia Poverty Law Center, *Volunteer*, February 2023 – present

- Helping process messages from tenants seeking legal advice on eviction
- Opening case files in online case management system to prepare them for attorney review

Debevoise & Plimpton, New York, NY, *Summer Associate*, Summer 2022

- Researched and completed writing assignments on issues involving federal mining laws and international arbitration
- Assisted in drafting a bill of particulars and researched state civil procedure rules
- Proofread documents to support litigation filings

Professor Curtis A. Bradley, The University of Chicago Law School, Chicago, IL, *Research Assistant*, June 2021 – January 2022

- Researched and reported on foreign relations law topics, such as the role of legislative oversight in nuclear nonproliferation laws
- Coded data on international commitments that the United States has undertaken through non-binding joint statements with other countries

Independent Research Assistant, Washington, D.C., February 2020 – May 2020

- Researched current foreign policy of the United States, South Korea, and North Korea to support the book project of a co-founder of 38 North, a website that publishes informed analysis of issues in and around North Korea
- Contributed research to a database of news stories, research articles, and official documents on the Trump administration's North Korea policy

38 North, The Stimson Center, Washington, D.C., *Research Assistant*, May 2019; *Research Intern*, September 2018 – May 2019

- Wrote a 1,500-word report on current diplomacy between the two Koreas
- Drafted and submitted Freedom of Information Act requests

INTERESTS

- I enjoy watching NHL hockey, pursuing film photography, and caring for my cat
- I am a dual citizen of the United States and Denmark

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Office of the University Registrar
Chicago, Illinois 60637

Name: Madison Alyssa Phillips
Student ID: 12286315

Scott C. Campbell, University Registrar

University of Chicago Law School

Degrees Awarded

Degree: Doctor of Law
Confer Date: 06/03/2023
Degree GPA: 179.281
Degree Honors: With Honors
J.D. in Law

Academic Program History

Program: Law School
Start Quarter: Autumn 2020
Program Status: Completed Program
J.D. in Law

External Education

Brown University
Providence, Rhode Island
Bachelor of Arts 2018

Beginning of Law School Record

Autumn 2020

Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Lior Strahilevitz	3	3	177
LAWS 30211	Civil Procedure Emily Buss	4	4	177
LAWS 30611	Torts Adam Chilton	4	4	180
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	177

Winter 2021

Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law Jonathan Masur	4	4	177
LAWS 30411	Property Aziz Huq	4	4	182
LAWS 30511	Contracts Omri Ben-Shahar	4	4	177
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	177

Spring 2021

Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	178
LAWS 30713	Transactional Lawyering David A Weisbach	3	3	180
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	176
LAWS 43201	Comparative Legal Institutions Thomas Ginsburg	3	3	178
LAWS 44201	Legislation and Statutory Interpretation Jennifer Nou	3	3	179

Summer 2021

Honors/Awards
The Chicago Journal of International Law, Staff Member 2021-22

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	178
LAWS 42201	Secured Transactions Erin Casey	3	0	W
LAWS 43230	Public International Law Thomas Ginsburg	3	3	177
LAWS 53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton	2	2	178
LAWS 94130	The Chicago Journal of International Law Anthony Casey	1	1	P


Winter 2022

Course	Description	Attempted	Earned	Grade
LAWS 40201	Constitutional Law II: Freedom of Speech Geoffrey Stone	3	3	183
LAWS 46101	Administrative Law David A Strauss	3	3	177
LAWS 53221	Current Issues in Criminal and National Security Law Meets Writing Project Requirement	3	3	182
Designation:	Michael Scudder Patrick Fitzgerald			
LAWS 53398	Communications and Advocacy for Lawyers Marsha Nagorsky	3	3	182
LAWS 94130	The Chicago Journal of International Law Anthony Casey	1	1	P

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED



Name: **Madison Alyssa Phillips**
Student ID: **12286315**



Scott C. Campbell, University Registrar

University of Chicago Law School

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 42301	Business Organizations Saul Levmore	3	3	183
LAWS 43269	Foreign Relations Law Curtis Bradley	3	3	180
LAWS 47301	Criminal Procedure II: From Bail to Jail Sharon Fairley	3	3	178
LAWS 53219	Counterintelligence and Covert Action - Legal and Policy Issues Stephen Cowen Tony Garcia	3	3	178
LAWS 94130	The Chicago Journal of International Law Meets Substantial Research Paper Requirement Designation: Anthony Casey	1	1	P

Spring 2023

Course	Description	Attempted	Earned	Grade
LAWS 41601	Evidence John Rappaport	3	3	179
LAWS 43251	Advanced Legal Writing Elizabeth Duquette	2	2	182
LAWS 53354	Cybercrime William Ridgway	3	3	181
LAWS 53499	Advanced Advocacy: Building and Using Your Advocate's Toolbox Robert Cheifetz	3	3	180

Send To: Madison Phillips
9705 Hidden Valley Road
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22181

Summer 2022

Honors/Awards
The Chicago Journal of International Law, Comments Editor 2022-23

End of University of Chicago Law School

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 41101	Federal Courts Curtis Bradley	3	3	182
LAWS 43284	Professional Responsibility and the Legal Profession Anna-Maria Marshall	3	3	180
LAWS 53263	Art Law William M Landes Anthony Hirschel	3	3	179

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	179
LAWS 53462	Tragedies and Takings: Selected Topics in Land Use and Resource Allocation Lee Fennell	3	3	179
LAWS 53463	Privacy and Modern Policing Vikas Didwania	3	3	182
LAWS 53482	Resolving Mass Tort Liability Meets Writing Project Requirement Designation: Amanda Johnson	3	3	179

Date Issued: 06/05/2023

Page 2 of 2

KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016

Curtis A. Bradley
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May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Madison Phillips for a clerkship with you.

Madison worked as one of my research assistants this past year, and she was also a student in my course this Spring on U.S. foreign relations law. She is smart, careful, and hard-working, and I think she will be an excellent law clerk.

As my research assistant, Madison researched and wrote memoranda on a variety of topics, including issues relating to legislative oversight of executive action. Her research was extremely useful to my writing projects, and I especially appreciated her willingness to dig into the details of statutory schemes, something that not all law students (or lawyers, for that matter) are patient enough to do. She was also very good about communicating with me at each stage of the projects.

Her grades have been consistently strong. Each semester, her grades have been at or above our median, and many of them have been substantially above it. In my foreign relations law course, she received a 180—a score that placed her in the top 20% of that class. In several of her other courses, she has received a 182 or 183, which would have placed her at or near the top of those class groups.

Madison also has extensive writing and editing experience. She served as the Editor-in-Chief of a journal at Brown University, she did research and writing for a website associated with a Washington, D.C. think tank, and she has served as an editor on our law school's international law journal. She will gain additional writing experience this summer working at Debevoise.

For all of these reasons, I highly recommend her for a clerkship.

Sincerely,

Curtis A. Bradley

Curtis Bradley - bradleyca@uchicago.edu

Professor Aziz Huq
Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
huq@uchicago.edu | 773-702-9566

May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Madison Phillips (University of Chicago Class of 2023), as a law clerk in your chambers for the 2023-24 year or beyond. I know Madison from having taught her as a student in two classes during her 1L year (2021-22): a remotely taught 1L Property class in the Winter Term, and Constitutional Law Class (on Equality and Due Process) in the Spring Term, again taught by Zoom. Madison entered an exceptional performance in Property, and had respectably strong performance in Constitutional Law. Consistent with this, her overall performance at the law school has been characterized by a large number of truly exceptional grades, coupled with some strong grades that still demonstrate a clear understanding of the material at issue. Further, it is the sort of transcript that leaves no doubt about her capacity to perform in the high-stress context of a clerkship. Madison, in addition, has obtained a coveted journal position with the Chicago Journal of International Law. She also has started to acquire an array of quite different kinds of legal experience necessary, all with an eye to pursuing ultimately a career in government service.

Based on my experience with Madison in class and beyond, my review of her exams in both classes, and my consideration of her transcript (which shows a growing academic confidence and strength), I believe that Madison is a very strong candidate for a judicial clerkship, and will be terrific to have in chambers. I wholeheartedly endorse her application in that regard.

Let me start with academics. As noted above, I have taught Madison in two 1L classes: Property and "Constitutional Law III" (which covers Equal Protection and Due Process jurisprudence). She performed exceptionally well in the first of these: Her grade placed her in the top five percent in a class of about 70 people. She also offered a very creditable performance in the first-year Constitutional Law class. I looked back at her Property exam, and my impression that Madison will be an excellent legal analyst and writer was more than confirmed. The exam was full of careful and lucid reasoning. It showed great care in weaving details from the prompt with the doctrine. Further, Madison offered fair-minded consideration of both sides of many controversial arguments. The exam, notwithstanding the pressure-cooker conditions of its production, was also a very strong piece of writing.

A review of her overall transcript suggests that Madison has been able to obtain some very high grades—in my Property class, but also in Torts and Transactional Lawyering—in the first year. In her second year, Madison has put in an event more impressive performance. Three of the four grades she received in the winter quarter last year, for example, were very high "A" grades. It is striking that two of them were in federal constitutional and statutory law classes: These show that Madison is capable of mastering, and even excelling, in the kind of legal reasoning that is at the core of the federal clerk's tasks. Moreover, neither Geof Stone nor Michael Scudro nor yet Patrick Fitzgerald (the professors in those classes) is exactly known as a pushover! In the following term, she again scored really impressive grades in Corporations and Foreign Relations Law—and then the next term, knocked it out of the park in both Federal Courts and Professional Responsibility. In all of these classes, her grades were absolutely stellar. The balance of Madison's transcript beyond my classes thus demonstrates not only her clear capacity to handle and excel in the work of a federal clerkship as a pure intellectual matter, but also a particular aptitude for the kind of law that is central to the role of federal clerks. And it is also telling that Madison is able to score highly in both private and public law classes—which suggests a measure of intellectual breadth and flexibility.

To place this in context, it is worth saying something about my exams and about the Chicago grading system as a whole. On the first, I write complex, issue-intensive exams that demand an ability to read a detailed fact pattern and immediately perceive not just the presence of a legal issue, but also a host of interactions between the legal issue and the facts, and also the several alternative (often outcome dispositive) ways of framing the issue. I identified ex ante 200 distinct points and subpoints that could be raised based on the exam prompts, and graded students accordingly. This approach means I obtain a dispersion of grades that ensures meaningful distinction. So I can be very certain that Madison's property exam was just terrific as an instance of legal reasoning, as explained above. In respect to the grading system as a whole, furthermore, it is worth noting that that the precision with which I can locate Madison in the class as a whole likely works to her detriment in comparison to students of schools that use a grading system that blurs their likely location in their class as a whole. As you likely know from having our graduates as clerks before, Chicago uses a very strict curve round a median score of 177 (which is a B in our argot). There is rarely any large movement from the median, and any grade above 180 is a sterling one, awarded only to a small slice of any

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given class. Chicago also grades on a normal distribution, lending additional clarity and focus to its scores. Moreover, because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. We are hence able to very finely distinguish between students at all levels—which our peers cannot say because they use a system that obscures differences between students below the top rank. My sense is that Madison is at a minimum in the top third of the class in her first year, but it's also my expectation that she will improve as time goes on and graduate at the higher end of that range (especially if she continues her streak of very, very strong grades).

At Chicago more generally, Madison has obtained a place on the Chicago Journal of International Law. In the past year, she has taken a leadership role in respect to the journal, managing the process of student comment publication. She then spent her 2L summer at Debervoise in New York, working on both state and federal law questions. I have no doubt this helped build her legal skills, and that she will graduate a truly excellent lawyer. Further, it is my belief that Madison is likely to go into public service, likely in the Foreign Service or State Department, at some point in the future. Before law school, she worked on issues related to our foreign policy on North Korea. She has since kept up her interest in international law and politics in several ways during law school, including through work with my colleague Curt Bradley.

Based on all the evidence at my disposal, I am certain that Madison will be a very strong law clerk. Clearly, she is more than capable of handling the work entailed, and she will be a solid presence in chambers. I am thus an unequivocal supporter of her application. I would be happy to answer any questions you have and can be reached at your disposal at huq@uchicago.edu.

Sincerely,

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law

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Professor Tom Ginsburg
*Leo Spitz Professor of International Law,
Ludwig and Hilde Wolf Research Scholar
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May 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Madison Phillips, a member of the class of 2023, for a clerkship in your chambers. Madison is a very strong candidate. She is very bright and an excellent writer, whom I recommend very highly.

I first met Madison during her 1L year when she enrolled in my course in Comparative Legal Institutions during the Spring Quarter. This course is one of our first-year electives, designed to encourage thinking about law from a broad interdisciplinary perspective. Mine looks at law across time and space, integrating literatures from political science and economics along with more conventional legal materials. We survey, among other legal systems, those of imperial China and classical Islam, focusing on judicial institutions and their core structures. Madison was an enthusiastic class participant who always added value to the class discussion, and demonstrated the ability to think creatively in dealing with novel material. Her exam was one of the better ones, above median in the class of about 80 excellent students.

This year, Madison enrolled in my large course in Public International Law, which covers an array of topics in the field, including foreign relations law and the status of international law in the United States. Madison was again a strong student, who was always prepared, and a superb addition to the classroom. She easily soaked up an unfamiliar area of law. I must admit that my exam in this course was not very well designed, and there was massive grade compression in the class. Madison was at the median of this group of about 50, which I should add was one of the best I have ever taught, so this is a fine achievement.

I have also worked with Madison on the Chicago Journal of International Law, where she is serving as a Comments Editor. She has very strong writing and editorial skills, and will be excellent at working with junior colleagues to improve their work. I have also been impressed with the collegiality of this particular group of editors at the Journal, for which I have served as faculty advisor for a number of years. This group has managed a number of novel challenges in a resilient and effective manner.

Madison is a team player who is very personable, and gets along with others. She is a fun person to be around, who communicates intelligence and good humor, and I am confident that others in chambers will enjoy working with her. She will be a very easy person to mentor, and you will be able to count on her as someone whose drafts will be very strong and responsive.

The bottom line is that Madison Phillips is a terrific law student, who will be a smart, hardworking, and focused clerk, as well as a superb lawyer thereafter. I recommend her very highly and urge you to interview her. You will not be disappointed.

Please do not hesitate to contact me for further information or detail.

Sincerely,
Tom Ginsburg

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Madison A. Phillips

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WRITING SAMPLE

I prepared the attached writing sample for my Legal Research & Writing class at the University of Chicago Law School. In this assignment, I was asked to write a brief for plaintiff-appellee Katara Hakoda on a fictional Federal Arbitration Act (FAA) claim and an Equal Pay Act (EPA) claim in the Fifth Circuit without having read the appellant's brief. To create a ten-page writing sample, I omitted the tables of contents and authorities, the statements of jurisdiction and the issues, and the summaries of the facts and procedural history. I also omitted the conclusion and the certificate of compliance. I received feedback from my school's writing coach on my brief.

In this assignment, Katara Hakoda worked as a Systems Engineer for the interstate oil and gas pipeline company Appa Transport Systems (Appa). The main task of Appa's Systems Engineers was to remotely direct the flow of oil and gas through Appa's interstate pipelines. Hakoda also worked four night shifts per month and made quarterly out-of-state client visits. Hakoda brought an EPA claim in federal district court after she learned that Appa was paying Hakoda less than Long Feng, a newly-hired male Systems Engineer, despite their identical responsibilities. Appa moved to compel arbitration of Hakoda's EPA claim because of an arbitration clause in her employment contract. The district court denied Appa's motion on the grounds that Hakoda was a transportation worker exempted from the FAA. The district court granted summary judgment for Hakoda on the grounds that Appa's sole affirmative defense to the EPA claim failed as a matter of law. Appa appealed both rulings.

My citations to the assignment's record took the form of the letter "R" followed by the page number of the record being cited.

Madison A. Phillips

Writing Sample

SUMMARY OF THE ARGUMENT

The district court correctly denied Appa's motion to compel arbitration because Hakoda is a transportation worker covered by the § 1 exemption of the FAA. First, Hakoda is actually engaged in the movement of goods in interstate commerce because she directs the active flow of oil and gas through interstate pipelines. R3. Second, the Supreme Court has long emphasized the role that oil and gas pipeline companies play in interstate commerce. Hakoda's employment at a company heavily involved in interstate commerce confirms that she is a transportation worker.

The district court also correctly granted Hakoda's motion for summary judgment on her EPA claim on the grounds that Appa's sole affirmative defense fails as a matter of law. Appa argued that Feng's higher salary and lack of night shift work at his previous job with Bosco Logistics were "factor[s] other than sex" that justified the pay disparity with Hakoda under the EPA. 29 U.S.C. § 206(d)(1). First, Appa's argument is pretext for sex discrimination. The EPA is hostile to pretextual affirmative defenses. Appa's argument that it paid Feng more to entice him to leave his job at Bosco is pretext because the record does not show Appa made any effort to retain Hakoda as an employee despite the "tight" labor market that causes Appa and Bosco to "regularly" have "difficulty finding adequate numbers of talented engineers." R8.

Second, an employee's prior salary is not a valid "factor other than sex." The EPA's purpose is to counter the historical trend of employers paying female employees less than male employees for the same work. Considering Feng's prior salary embodies the very consideration of market forces that the EPA is meant to protect against.

Third, Feng's prior lack of night shift duties at Bosco is not a valid "factor other than sex." Appa assumed that Feng would not perform the same night shift duties as Hakoda at the same rate of pay, so it offered Feng a higher salary than it paid Hakoda. R8. But the Supreme

Madison A. Phillips

Writing Sample

Court disproved of an employer taking advantage of female employees' willingness to perform the same work for less pay in a case involving sex disparities in night shifts and compensation. As a result, the district court correctly granted Hakoda's motion for summary judgment on her EPA claim.

ARGUMENT

I. Standard of review

A district court's denial of a motion to compel arbitration is reviewed *de novo*. *Janvey v. Alguire*, 847 F.3d 231, 240 (5th Cir. 2017). A district court's order granting summary judgment is reviewed *de novo*. *In re Louisiana Crawfish Producers*, 852 F.3d. 456, 462 (5th Cir. 2017). Summary judgment is appropriate where "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Castellanos-Contreras v. Decatur Hotels, LLC*, 622 F.3d 393, 397 (5th Cir. 2010). Because the parties agreed to a stipulated set of material facts, R4, a grant of summary judgment depends on Hakoda being entitled to judgment as a matter of law. *Id.* at 397.

II. The district court correctly found that Hakoda is a transportation worker under the FAA's residual clause because Hakoda is engaged in the movement of goods in interstate commerce

A. The FAA's residual clause exempts transportation workers from judicial enforcement of arbitration clauses in their employment contracts

The FAA "compels judicial enforcement of a wide range of written arbitration agreements." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001). But it exempts the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from judicial enforcement of arbitration clauses in those contracts. 9 U.S.C. § 1. The final clause of § 1, covering "any other class of workers engaged in

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Writing Sample

foreign or interstate commerce,” is referred to as the “transportation worker exemption” or the “residual clause.” *Eastus v. ISS Facility Servs., Inc.*, 960 F.3d 207, 209 (5th Cir. 2020).

The Fifth Circuit explained that the transportation worker exemption applies to employees “actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are.” *Id.* (quoting *Rojas v. TK Commc'ns, Inc.*, 87 F.3d 745, 748 (5th Cir. 1996)). While the Supreme Court has not defined the term “transportation workers,” the Fifth Circuit has recognized that the Supreme Court’s interpretation of the term is “fully consistent” with its own “actually engaged” analysis. *Brown v. Nabors Offshore Corp.*, 339 F.3d 391, 394 (5th Cir. 2003). If the employee “herself was engaged in the movement of goods,” then the employee is a transportation worker. *Eastus*, 960 F.3d at 211.

In residual clause cases, the Fifth Circuit analyzes the employee’s tasks to decide if she qualifies for the exemption. Other circuits also consider the business and industry in which the employee works. Hakoda is a transportation worker under both approaches.

B. Hakoda is actually engaged in the movement of goods in interstate commerce because of her direction of oil and gas through interstate pipelines

The Fifth Circuit analyzes the employee’s particular role to decide if she falls within the residual clause. It found that an airline ticketing and gate agent supervisor was not a transportation worker because she herself “was not engaged in an aircraft’s actual movement in interstate commerce.” *Eastus*, 960 F.3d at 208-12. The Fifth Circuit also decided that a radio disc jockey was not covered by the residual clause because transportation workers must be “actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are.” *Rojas*, 87 F.3d at 748 (quoting *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 601 (6th Cir. 1995)).

Madison A. Phillips

Writing Sample

“[T]here is a distinction between handling goods and moving them.” *Eastus*, 960 F.3d at 211. This distinction comes from “Section 1 of the FAA’s enumeration of seamen and not longshoremen, who are the workers who load and unload ships.” *Id.* Because the airline supervisor in *Eastus* handled passengers’ luggage as needed, the Court compared her role to that of a longshoreman. *Id.* at 208, 211. It declined to apply the exemption because the employee’s “duties could at most be construed as loading and unloading airplanes.” *Id.* at 212. “Loading or unloading a boat,” like an airplane, “prepares the goods for or removes them from transportation,” which does not justify applying the exemption. *Id.*

As a Systems Engineer, Hakoda does not prepare oil for or remove it from pipelines but “directs the flow of oil in the pipelines to different locations.” R1. She has control over where the oil goes and exercises that control to help the oil move from production facilities to refineries and storage facilities. *Id.* The pipelines that she manages run across states, from Louisiana into Texas and Mississippi and from Texas into Oklahoma. R2. Unlike longshoremen who load and unload ships, Hakoda begins her work after the oil has already been loaded into the pipeline. She is engaged in the oil’s “actual movement in interstate commerce.” *Eastus*, 960 F.3d at 212.

Hakoda is “actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are.” *Rojas*, 87 F.3d at 748 (quoting *Asplundh*, 71 F.3d at 601). Hakoda’s role is comparable to that of ship captains, who would be covered by § 1 as seamen. Hakoda makes “real-time decisions as to where active flows of oil and gas should be directed.” R3. Like Hakoda, ship captains make real-time decisions as to what routes to take to get to a destination. Systems Engineers also cause “oil and gas to arrive at certain facilities and not others,” just as captains cause their ships to arrive at certain docks and not others. *Id.* Hakoda’s ability to transport oil while she remains in one location does not make her any less of

Madison A. Phillips

Writing Sample

a transportation worker. She is actually engaged in the movement of oil in interstate commerce.

Hakoda is a transportation worker covered by the FAA's § 1 exemption.

The Fifth Circuit has not addressed whether or not an individual employee must herself travel interstate to be considered a transportation worker, but other circuits' holdings support Hakoda's claim. Hakoda regularly crosses state lines for her work because she must travel quarterly to client sites in Louisiana, Mississippi, and Texas to adjust Appa's on-site equipment. R1-R2. Still, other circuits have held that no interstate travel is necessary for an employee to be a transportation worker. The Third Circuit declined to limit the transportation worker exemption to "cover only those workers who physically transported goods across state lines" because Congress "would have phrased the FAA's language accordingly" if it had intended such a limitation. *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593-94 (3rd Cir. 2004), cert. denied, 543 U.S. 1049 (2005). The Ninth Circuit held that last-mile delivery drivers do not need to cross state lines while making deliveries to be considered transportation workers. *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 919 (9th Cir. 2020), cert. denied, 141 S. Ct. 1374 (2021). The Third Circuit and Ninth Circuit holdings applied to this case prohibit finding that Hakoda's remote direction of interstate pipeline flows disqualifies her from being a transportation worker.

C. Appa's heavy engagement in interstate commerce requires applying the transportation worker exemption to Hakoda

The Fifth Circuit has not addressed whether or not an employer's involvement in interstate commerce determines the employee's status as a transportation worker, but other circuits have considered the roles of the employer and of the employer's industry in interstate commerce. *See Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 22-23 (1st Cir. 2020) (explaining that "[t]he nature of the business for which a class of workers perform their activities must inform" the exemption analysis); *see also Singh v. Uber Technologies Inc.*, 939 F.3d 210, 227

Madison A. Phillips

Writing Sample

(3rd Cir. 2019) (explaining that the discussion of whether or not an employee belongs to a class of transportation workers may be informed by “information regarding the industry in which the class of workers is engaged”).

The Supreme Court’s long history of emphasizing the role that oil and gas pipelines play in interstate commerce strongly supports finding Appa is involved in interstate commerce. The Supreme Court noted the “interstate commerce aspects of the natural-gas business” and the role that an interstate pipeline company plays in the business. *Phillips Petroleum Co. v. State of Wis.*, 347 U.S. 672, 682-83 (1954). While the issue in *Phillips Petroleum* concerned the jurisdiction of the Natural Gas Act, 15 U.S.C. §§ 7171 *et seq.*, the district court here favorably cited *Phillips Petroleum* because it proves that the Supreme Court has historically recognized that oil pipeline companies are involved in interstate commerce. *See* R3.

Under the approach taken by the First Circuit and the Third Circuit, Hakoda is a transportation worker because of Appa’s involvement in interstate commerce as an oil and gas pipeline company. Appa is engaged in the flow of interstate commerce every day that oil flows through its interstate pipelines. As the Supreme Court found, the oil pipeline industry is a quintessential example of an industry that operates in interstate commerce. By acting as a “frontline employee” directing the flow of oil through Appa’s interstate pipelines, R3, Hakoda is a transportation worker actually engaged in the movement of goods in interstate commerce.

III. The district court correctly granted Hakoda’s motion for summary judgment on her EPA claim because Appa’s sole affirmative defense fails as a matter of law

Binding precedent confirms that Appa’s sole affirmative defense to Hakoda’s EPA claim fails as a matter of law. EPA claims are evaluated using a burden-shifting framework. First, the plaintiff must make a *prima facie* case showing that his or her employer compensates male and female employees differently for equal work. *Lindsley v. TRT Holdings, Inc.*, 984 F.3d 460, 466

Madison A. Phillips

Writing Sample

(5th Cir. 2021). After the plaintiff makes a prima facie case of discrimination, the burden shifts to the defendant to prove one of four enumerated affirmative defenses justifying the pay disparity. *Id.* at 467; *see also Washington Cnty. v. Gunther*, 452 U.S. 161, 167 (1981) (quoting 29 U.S.C. § 206(d)(1)). The fourth affirmative defense is that the disparity was due to any “factor other than sex.” 29 U.S.C. § 206(d)(1). Here, the district court correctly granted Hakoda’s motion for summary judgment. First, the parties do not dispute that Hakoda has made a prima facie case. Second, Feng’s prior salary and lack of night shift work is not a valid “factor other than sex” under Supreme Court and Fifth Circuit precedent, so Appa’s sole affirmative defense fails as a matter of law.

A. Appa’s sole affirmative defense fails as a matter of law because it violates the EPA’s broad purpose and is pretext for discrimination

Congress enacted the EPA in response to “a serious and endemic problem of [sex-based] employment discrimination in private industry.” *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974). As part of solving this serious issue, the Fifth Circuit recognized that the EPA does not permit pretextual affirmative defenses to prima facie cases of discrimination. In *Siler-Khodr*, the Fifth Circuit found that an employer’s affirmative defense, which was based on a male counterpart’s prior salary and market forces, was “pretext” and “easily rebutted.” *Siler-Khodr v. Univ. of Texas Health Sci. Ctr. San Antonio*, 261 F.3d 542, 549 (5th Cir. 2001), cert. denied, 537 U.S. 1087 (2002); *see also Plemmer v. Parsons-Gilbane*, 713 F.2d 1127, 1136 (5th Cir. 1983) (explaining that the trial court should have considered the plaintiff’s evidence of the defendant’s justification for a pay differential being “pretextual”).

Appa’s asserted affirmative defense is invalid because it is pretext for discrimination. Appa argues that it paid Feng more than Hakoda to lure Feng from his job at Bosco, where he had a higher salary and did not work night shifts. But the record contains no evidence that Appa

Madison A. Phillips

Writing Sample

considered protecting against Bosco trying to lure Hakoda from her job at Appa. *See* R7-R9.

Talented Systems Engineers are rare in the “tight” Louisiana labor market. R8. Hakoda is a talented Systems Engineer, as shown by her “excellent” and otherwise positive quarterly reviews, and Appa was already attempting to fill a Systems Engineer vacancy with Feng. *See* R7. Bosco paid its Systems Engineers without night shifts more than Appa paid its own Systems Engineers with night shifts. R8. Hakoda leaving Appa for a higher-paying job at Bosco would compound the “difficulty finding adequate numbers of talented engineers” with which companies such as Appa “regularly” struggled. *Id.* But Appa continued to pay Hakoda less than Feng, who performed identical tasks in a competitive labor market. *See* R7-R9. Appa’s lack of interest in retaining Hakoda proves that its asserted consideration of Feng’s prior salary and lack of night shift work is pretext for sex discrimination.

B. Considering Feng’s prior salary as a valid “factor other than sex” would perpetuate discrimination in violation of the EPA

Feng’s prior salary is not a valid “factor other than sex” because the Fifth Circuit held that hiring incentives driven by market forces do not count as a “factor other than sex.” In *Siler-Khodr*, a University of Texas (UT) hospital hired and paid a male doctor \$20,000 more per year than it paid a female doctor who performed equal work. *Siler-Khodr*, 261 F.3d at 544. The male doctor’s wife also worked at the university at the time. *Id.* UT stated that it offered the man a higher salary so that he would not seek employment in another city, causing his wife to leave the university. *Id.* UT argued, “given that the salary paid to a new employee is driven almost entirely by market forces[,] the University must expend resources to attract qualified individuals in a market where other organizations have the same goal.” *Id.* at 549. The Fifth Circuit rejected UT’s “market forces” argument because it “simply perpetuates the discrimination that Congress wanted to alleviate when it enacted the EPA.” *Id.*

Madison A. Phillips

Writing Sample

Applying *Siler-Khodr* here shows that Appa's defense is not a "factor other than sex." Feng earned more at Bosco than Hakoda did at Appa, R7-R8, just as the male doctor earned more at his prior job than the female doctor did at UT. Bosco and Appa "regularly" have difficulty hiring "adequate numbers of talented engineers," just as UT "must expend resources to attract qualified individuals in a market where other organizations have the same goal." R8; *Siler-Khodr*, 261 F.3d at 549. But the Fifth Circuit in *Siler-Khodr* affirmed the lower court's ruling that such "market forces" perpetuate sex discrimination. *Siler-Khodr*, 261 F.3d at 549. Finding that Feng's prior salary is a valid "factor other than sex" would perpetuate the discrimination that the EPA was enacted to end.

C. Required night shifts are not a "factor other than sex"

Appa argues that Feng's satisfaction with not needing to work night shifts at Bosco is a "factor other than sex" that "both itself counts as a permissible defense and renders the consideration of Feng's past salary permissible." R6. First, even if Feng's past salary may be considered in regard to Feng's lack of night shift work, *Siler-Khodr* shows that Feng's past salary cannot be considered a "factor other than sex" on its own. In other words, Appa may cite Feng's prior salary only to serve as a reference point for the number that Appa had to beat in its salary offer to persuade Feng to leave Bosco. Relying on Feng's prior salary as an independent "factor other than sex" would violate *Siler-Khodr*.

Second, a difference in night shift work between Feng's old job and his current job is not a permissible "factor other than sex." The Supreme Court in *Corning Glass* found that the defendant employer had not met its burden of proof in showing that a higher salary for men working night shifts "was in fact intended to serve as compensation for night work" instead of merely constituting "an added payment based upon sex." *Corning Glass*, 417 U.S. at 204. The

Madison A. Phillips

Writing Sample

Court found that the “differential arose simply because men would not work at the low rates paid women inspectors, and it reflected a job market in which Corning could pay women less than men for the same work.” *Id.* at 205.

Similarly, the differential between Feng and Hakoda arose because Appa’s employees responsible for filling the Systems Engineer vacancy assumed that Feng would not work at the lower rate paid to Hakoda. The differential also reflects a job market in which Appa can pay Hakoda less than Feng for the same work. *See* R8. “That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work.” *Corning Glass*, 417 U.S. at 205. Appa’s affirmative defense that Feng’s prior lack of night shifts is a “factor other than sex” is not supported by the Supreme Court’s jurisprudence and fails as a matter of law.

The district court correctly granted Hakoda’s motion for summary judgment because Appa’s sole affirmative defense fails as a matter of law.

Applicant Details

First Name **Mikaela**
 Last Name **Phillips**
 Citizenship Status **U. S. Citizen**
 Email Address maphillips019@gmail.com
 Address

Address

Street
1415 N. Taft St, Apt P195
 City
Arlington
 State/Territory
Virginia
 Zip
22201

Contact Phone Number **8568168927**

Applicant Education

BA/BS From **George Washington University**
 Date of BA/BS **May 2018**
 JD/LLB From **William & Mary Law School**
<http://law.wm.edu>
 Date of JD/LLB **May 22, 2021**
 Class Rank **25%**
 Law Review/Journal **Yes**
 Journal(s) **William & Mary Journal of Race, Gender,
 and Social Justice**
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia, Virginia**

Prior Judicial Experience

Judicial Internships/
 Externships **No**
 Post-graduate Judicial
 Law Clerk **Yes**

Specialized Work Experience

Recommenders

Crocker, Katherine
kmcrocker@wm.edu
(757) 221-3758

Chason, Anna Perez
apchason@wm.edu
757-509-0076

Zick, Timothy
tzick@wm.edu
757-221-2076

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Mikaela Phillips
1415 N. Taft Street, Apt. P195
Arlington, Virginia 22201
(856) 816-8927
maphillips019@gmail.com

March 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am writing to apply for a judicial clerkship in your chambers for the 2024-2025 term. I am a law clerk for the Honorable William T. Newman, Jr., of the Arlington County Circuit Court, a future law clerk for the Honorable Cleo E. Powell, of the Supreme Court of Virginia, and a graduate of William & Mary Law School, where I served as the Senior Articles Editor of the *William & Mary Journal of Race, Gender, and Social Justice*.

My strong legal research and writing skills will enable me to effectively serve as your clerk. At Victor M. Glasberg & Associates, I collaborated with my supervising attorneys on a lawsuit challenging the constitutionality of a Virginia statute requiring individuals to disclose their race on a marriage license application. After my initial research regarding compelled speech disclosed no on-point case law, I identified and fused three lines of First Amendment case law to draft a persuasive argument that the firm's attorneys used as the basis for one of the four claims in the complaint. This research and experience inspired my student Note, which was published in Volume 27 of the *William & Mary Journal of Race, Gender, and Social Justice*.

I continued to hone these skills through my involvement at William & Mary. As a Fellow in the Law School's Legal Practice Program, I taught first-year students how to cite sources in accordance with the Bluebook, and helped develop their writing and advocacy skills by critiquing their writing assignments and lawyering skills simulations. As a Research Assistant to Professor Timothy Zick, I researched and drafted substantive memoranda on pandemic protest movements, qualified immunity, and student speech rights to support an upcoming book on public protest.

My post-graduate and prior clerkship experiences have prepared me to hit the ground running. As a Civil Rights Litigation Fellow at Bernabei & Kabat, I drafted pleadings and demand letters. As a law clerk to Judge Newman, I draft bench memoranda and manage a fast-paced docket. Next year, as a law clerk to Justice Powell, I will gain experience drafting opinions and writs. Additionally, I attended the 2023 Judicial Clerkship Opinion Writing Conference at Catholic University Columbus School of Law, where I further developed my opinion writing skills.

Enclosed for your consideration are my resume, law school transcript, writing sample, and letters of recommendation. Thank you for your consideration of my application. I welcome the opportunity to interview and further discuss my qualifications for a judicial clerkship in your chambers.

Respectfully,



Mikaela Phillips

MIKAELA PHILLIPS

1415 N. Taft Street, Apt. P195 | Arlington, Virginia 22201 | (856) 816-8927 | maphillips019@gmail.com

EDUCATION

William & Mary Law School, Williamsburg, Virginia

J.D., *cum laude*, May 2021

G.P.A.: 3.5

Honors: ***William & Mary Journal of Race, Gender, and Social Justice***, Senior Articles Editor
 Legal Practice Program, Fellow
 Gambrell Professionalism Award for professionalism, public service, and integrity
 Spong Professionalism Award for continued excellence in the Legal Practice Program
 Best Student Note, *William & Mary Journal of Race, Gender, and Social Justice*

The George Washington University, Washington, D.C.

B.A., *summa cum laude*, Political Science, May 2018

G.P.A.: 3.9

EXPERIENCE

Hon. Cleo E. Powell, Supreme Court of Virginia, Richmond, Virginia

Incoming Law Clerk

August 2023 to August 2024

Will conduct legal research, draft opinions, and provide support.

Hon. William T. Newman, Jr., Arlington County Circuit Court, Arlington, Virginia

Law Clerk

August 2022 to Present

Conducting legal research, drafting orders, and providing support.

Bernabei & Kabat, PLLC, Washington, D.C.

Civil Rights Litigation Fellow

August 2021 to July 2022

Drafted pleadings and demand letters. Participated in settlement negotiations and mediations. Drafted and responded to discovery requests. Interviewed potential clients and assessed viability of claims.

William & Mary Law School, Williamsburg, Virginia

Research Assistant to Professor Timothy Zick

May 2020 to May 2021

Collected and analyzed case law, news articles, and legal scholarship regarding recent protest movements. Drafted memoranda on pandemic protests, campus protests, and qualified immunity in support of a forthcoming book. Conducted 50-state survey analyzing 215 statutes regulating “sensitive places” in support of a law review article.

U.S. Equal Employment Opportunity Commission, New York, New York

Remote Legal Extern

January to March 2021

Drafted memoranda on successor liability for injunctive relief and taxable costs. Conducted document review.

Victor M. Glasberg & Associates, Alexandria, Virginia

Law Clerk

Summers 2019 and 2020

Drafted memoranda on evidentiary, standing, and due process issues. Analyzed case law, statutes, and legislative history in connection with a constitutional challenge to a Virginia law requiring the disclosure of marriage license applicants’ race. Provided substantive and technical edits to a petition for writ of certiorari.

PUBLICATIONS

Just Cause, Not Just Because: A Pro-Worker Reform for the Employment Landscape, 170 U. PA. L. REV. ONLINE 90 (2022).

Marriage Mandates: Compelled Disclosures of Race, Sex, and Gender Data in Marriage Licensing Schemes, 27 WM. & MARY J. RACE, GENDER, & SOC. JUST. 575 (2021).

BAR ADMISSIONS

District of Columbia; Virginia; U.S. District Court, Eastern District of Virginia

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

COVID-19 PANDEMIC: GRADES FOR THE SPRING 2020 TERM

In response to disruption caused by the global COVID-19 pandemic, the William & Mary Law School faculty voted to require that every course taught at the Law School during the Spring 2020 term be graded Pass/Fail. This change to Pass/Fail grading for the Spring 2020 term impacts members of our Classes of 2020, 2021, and 2022. Please note that "Pass" grades in courses graded on a Pass/Fail basis do not affect a student's GPA. As a result, class ranks for the Classes of 2020 and 2021 were not re-calculated following the Spring 2020 term, and the Class of 2022 received their initial ranking only after the Fall 2020 term.

Transcript Data	
STUDENT INFORMATION	
Name :	Mikaela A. Phillips
Curriculum Information	
Current Program	
Juris Doctor	
College:	School of Law
Major and Department:	Law, Law
Major Concentration:	Public Interest/Social Justice
***Transcript type:WEB is NOT Official ***	
DEGREES AWARDED	

PAGE 2 OF 5

MIKAELA A. PHILLIPS

Conferred: Juris Doctor		Degree Date: May 22,2021						
Institutional Honors: Cum Laude								
Curriculum Information								
Primary Degree								
College:		School of Law						
Major:		Law						
Major Concentration:		Public Interest/Social Justice						
		Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA	
Institution:		86.000	86.000	86.000	54.000	186.60	3.45	
INSTITUTION CREDIT -Top-								
Term: Fall 2018								
Subject	Course	Level	Title		Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law		B	4.000	12.00	
LAW	102	LW	Civil Procedure		A-	4.000	14.80	
LAW	107	LW	Torts		B+	4.000	13.20	
LAW	130	LW	Legal Research & Writing I		A-	2.000	7.40	
LAW	131	LW	Lawyering Skills I		P	1.000	0.00	
Term Totals (Law - First Professional)								
			Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:			15.000	15.000	15.000	14.000	47.40	3.38
Cumulative:			15.000	15.000	15.000	14.000	47.40	3.38
Unofficial Transcript								
Term: Spring 2019								
Subject	Course	Level	Title		Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property		B	4.000	12.00	
LAW	109	LW	Constitutional Law		B+	4.000	13.20	
LAW	110	LW	Contracts		B+	4.000	13.20	
LAW	132	LW	Legal Research & Writing II		B+	2.000	6.60	
LAW	133	LW	Lawyering Skills II		P	2.000	0.00	
Term Totals (Law - First Professional)								
			Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA

PAGE 3 OF 5

MIKAELA A. PHILLIPS

Current Term: 16.000 16.000 16.000 14.000 45.00 3.21

Cumulative: 31.000 31.000 31.000 28.000 92.40 3.30

Unofficial Transcript

Term: Fall 2019

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	309	LW	Evidence	A-	3.000	11.10	
LAW	400	LW	First Amend-Free Speech & Pres	A-	3.000	11.10	
LAW	401	LW	Crim Proc I (Investigation)	P	3.000	0.00	
LAW	477	LW	Section 1983 Litigation	B+	3.000	9.90	
LAW	763	LW	Journal Race,Gender,& Soc Just	P	1.000	0.00	

Term Totals (Law - First Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	9.000	32.10	3.56
Cumulative:	44.000	44.000	44.000	37.000	124.50	3.36

Unofficial Transcript

Term: Spring 2020

Term Comments: Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	P	2.000	0.00	
LAW	140B	LW	Adv Writing & Practice: Civil	P	2.000	0.00	
LAW	301	LW	ElecLaw Prac-LawyeringCampaign	P	1.000	0.00	
LAW	453	LW	Administrative Law	P	3.000	0.00	
LAW	480	LW	First Amend-Religion Clauses	P	3.000	0.00	
LAW	685	LW	Race, Law, & Lawyering Div Envi	P	3.000	0.00	
LAW	763	LW	Journal Race,Gender,& Soc Just	P	1.000	0.00	

Term Totals (Law - First Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	0.000	0.00	0.00

PAGE 4 OF 5

MIKAELA A. PHILLIPS

Cumulative: 59.000 59.000 59.000 37.000 124.50 3.36

Unofficial Transcript

Term: Fall 2020

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	398	LW	Election Law	A-	3.000	11.10	
LAW	415	LW	The Federal Courts	A-	3.000	11.10	
LAW	452	LW	Employment Discrimination	A-	3.000	11.10	
LAW	720	LW	Trial Advocacy	P	3.000	0.00	
LAW	763	LW	Journal Race,Gender,& Soc Just	P	2.000	0.00	

Term Totals (Law - First Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	9.000	33.30	3.70
Cumulative:	73.000	73.000	73.000	46.000	157.80	3.43

Unofficial Transcript

Term: Spring 2021

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	305	LW	Trust and Estates	A-	3.000	11.10	
LAW	429	LW	State & Local Government Law	A-	3.000	11.10	
LAW	580	LW	2nd Amend-Hist Theory Prac Sem	B+	2.000	6.60	
LAW	703	LW	Directed Reading	P	1.000	0.00	
LAW	758	LW	Federal Government Externship	P	2.000	0.00	
LAW	763	LW	Journal Race,Gender,& Soc Just	P	2.000	0.00	

Term Totals (Law - First Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	8.000	28.80	3.60
Cumulative:	86.000	86.000	86.000	54.000	186.60	3.45

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) [-Top-](#)

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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Total Institution:	86.000	86.000	86.000	54.000	186.60	3.45
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	86.000	86.000	86.000	54.000	186.60	3.45
Unofficial Transcript						

Katherine Mims Crocker
Associate Professor of Law

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757.221.3758
Email: kmcrocker@wm.edu

April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Mikaela Phillips Clerkship Recommendation

Dear Judge Walker:

I write to recommend Mikaela Phillips for a clerkship in your chambers. I was privileged to teach Mikaela in two classes at William & Mary Law School: Federal Courts during the fall of 2020 and State & Local Government Law during the spring of 2021. She stood out from the crowd in both. Mikaela is dedicated, intelligent, insightful, and personable. She'll make an outstanding law clerk, and I urge you to give her application very careful consideration.

Rarely have I seen someone with the kind of focused passion Mikaela has about civil-rights litigation. This emphasis reverberates across her résumé, from her current firm fellowship focused on civil-rights work to her leadership role as Senior Articles Editor of the William & Mary Journal of Race, Gender, and Social Justice to her externship at the EEOC to her research assistance on free speech, racial justice, and more. And rarely have I seen a recent law-school graduate with such a wealth of knowledge about various issues she is likely to encounter as a clerk. I know that Mikaela will benefit from and contribute to the intellectual life of chambers to an extraordinary degree.

Mikaela's Federal Courts exam was a testament to her analytic aptitude and writing skills. She identified issues magnificently, applied precedent with aplomb, and considered counterarguments consistently. Mikaela's exam revealed not only a proficiency in complex jurisdictional and related concepts but also an ability to see where the black-letter law ran out and other forms of reasoning were required. Her answers were meticulously organized and elegantly phrased. Indeed, Mikaela's exam was the only one (in a class of nearly 50 students) where I made a note that each and every response was especially well crafted. And her State & Local Government Law exam exhibited similar strengths.

Mikaela was a model class member in both Federal Courts and State & Local Government Law. She was always one of the most reliable and thoughtful contributors to classroom discussions, even though the remote format necessitated by the COVID pandemic would've made it easy to stay quiet. She went above and beyond her assigned work by seeking out and guiding others toward important connections between case law and the real world. She was always respectful of her classmates, and she demonstrated a critical ability to contemplate issues from multiple angles.

Mikaela's love of civil-rights law arose from her own experiences with discrimination as a Jewish person growing up in the Deep South. This abiding awareness of injustice and the role she can play in countering it explains why Mikaela always approaches legal conversations with a confident resolve—and why she continually looks beyond herself and toward improving conditions for vulnerable communities. As all this may suggest, Mikaela possesses a pleasant and inspiring presence. Getting to know her has been a true joy. I have every confidence that Mikaela will be a wonderful asset to any chambers fortunate enough to welcome her in.

Based on my experience working for two appellate judges and one trial judge, I believe Mikaela will make an exceptional clerk and colleague. Thank you for reviewing her application, and please don't hesitate to reach out if I can provide additional information about her impressive qualifications.

Sincerely,

/s/

Katherine Mims Crocker

Katherine Crocker - kmcrocker@wm.edu - (757) 221-3758



WILLIAM & MARY LAW SCHOOL

P.O. Box 8795
Williamsburg, VA 23187-8795

Anna Perez Chason
Professor of the Practice &
Assistant Director, Legal Practice Program
Phone: 757-509-0076
Fax: 757-221-3261
Email: apchason@wm.edu

May 12, 2021

To Whom It May Concern:

I am pleased to give you my enthusiastic recommendation for Mikaela Phillips. Mikaela is the most collegial and professional student I have ever had the pleasure to teach in my Legal Research and Writing class. In fact, I asked her to be my Legal Practice Fellow because I was impressed with her performance as a student. At William and Mary Law School, Legal Practice Fellowships are teaching assistant positions that the school awards on merit. Mikaela has served as my Fellow for two years, and I wish that I could have her as my Fellow permanently.

Mikaela has a mature attitude and a strong work ethic. Mikaela is self-directed, keeping me informed of her progress and staying persistently on point. Because of her mastery of the Bluebook, I have given her complete responsibility for grading my students' citations. I trust Mikaela with confidential matters, including grades and students' personal concerns. In her work as a Fellow, Mikaela also guides the students through practice simulations such as mock client interviews and mock negotiations in the Lawyering Skills class. She attends both my classes and the Lawyering Skills class, and holds regular office hours to help students with any Bluebook questions or general questions about law school.

Mikaela is always ready and willing to go the extra mile. As you know, the past year has been exceptionally difficult with the pandemic. Mikaela rose to the challenge, helping our students in many ways both large and small. For example, last year when the school had less than a week to shift to online classes, Mikaela volunteered to test our online platform before the students' oral arguments, and helped with the many technical aspects of holding the oral arguments online. This year, with our online-only classes, Mikaela has been instrumental in guiding the students through 1L year and making them feel as if they are part of a community. Many students, from a wide range of social backgrounds, have remarked to me that Mikaela's kind guidance and approachable demeanor helped them endure the rigors of law school in what can be an impersonal and disorienting online experience.

As a student, Mikaela's written work was consistently excellent. In Legal Research & Writing, Mikaela wrote two 10-page objective legal memoranda, two 10-page persuasive briefs, and several short assignments. In all of her work, she researched the issues thoroughly, and analyzed them carefully and correctly. She has a clear and cogent writing style that is a pleasure to read. I was not surprised when she won a spot on the *William & Mary Journal of Race, Gender, and Social Justice*, and later became its Senior Articles Editor.

ESTABLISHED 1779

Page 2

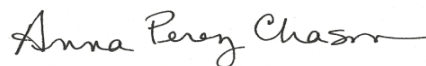
I require seven conferences throughout the year with each of my students. Some of the conferences are on ungraded assignments. I can tell much about a student's character by how she approaches the conferences and receives the direction I give. Some students come unprepared to their ungraded memo conferences, and do not put in a full effort for an ungraded assignment. However, Mikaela arrived at her ungraded memo conferences with a thoughtful first drafts and had insightful questions about how to improve her work. She then worked diligently and without complaint to polish what was already superior writing.

Outside of the classroom, I admire Mikaela's remarkable energy, compassion, and commitment to public service. On her own initiative, Mikaela helped to organize a candlelight service with the Jewish Law Students Association, the Black Law Students Association, the Muslim Law Students Association, the Latino Law Student Association, the Christian Legal Society, the Equality Alliance, and the Student Bar Association after the Pittsburgh and Louisville hate crimes in October 2018. More about the vigil is at <https://law.wm.edu/news/stories/2018/law-students-host-vigil-for-those-slain-in-pittsburgh-and-kentucky.php>. I was at the vigil and was thoroughly impressed by Mikaela's compassion and eloquence.

Mikaela has a history of service in the public sector. She has served in the Executive Office of the President, Office of Presidential Correspondence, for President Barack Obama. She worked for the Eleanor Roosevelt Papers Project. In law school, Mikaela continues her commitment to public service by working on the General Board of William & Mary's Public Service Fund. She also serves as the 3L Representative for the Student Bar Association, and volunteers with the Women's Law Society.

Although I am now a professor, I spent several years in practice and worked with many summer associates and new associates, all with excellent credentials. In my view, Mikaela would have been at the top of that group. She is intelligent, hardworking, and will be a true credit to the profession. I highly recommend her to you, and would be delighted to answer any questions you may have.

Sincerely,



Anna Perez Chason

Timothy Zick
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April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Re: Application of Mikaela Phillips

I am submitting this letter of recommendation on behalf of Mikaela Phillips, who is applying for a clerkship in your chambers. I could not be more enthusiastic about Mikaela and am pleased to give her my highest recommendation.

I had the pleasure of teaching Mikaela in three separate law school courses: The First Amendment (Speech and Press), Law and Religion (Religion Clauses), and a seminar on the Second Amendment. She was outstanding in all three. Mikaela is intellectually curious, but also appropriately grounded and pragmatic. She handled the complex doctrines in the three courses extremely well. She was a frequent participant in class discussions. We also had many out-of-class conversations about the substance of the three courses and other matters.

Mikaela was also my Research Assistant. To cut right to it: she was without a doubt the best RA I have had in my nearly twenty years of teaching. She is bright, self-motivated, diligent, and everything else one could want in an RA (or clerk).

Mikaela has a strong interest in civil rights and civil liberties and in particular freedom of speech and press. She knew I was writing a book about public protest and wanted to work on the project. Mikaela reached out to me about serving as an RA. I'm so glad she showed that initiative. Mikaela produced a comprehensive (80-page) research memorandum concerning limitations on the right to protest during a pandemic and during times of civil unrest (two of the topics addressed in the book). The memo includes data on all the summer protests, as well as descriptions and analyses of everything from pandemic curfews to the application of the Insurrection Act. Mikaela's memo was extremely helpful to me when I drafted the chapter of my book concerning protests during public health and other emergencies. I asked Mikaela to continue in her role as RA, and she thankfully agreed to do so. She subsequently produced similarly impressive research memoranda concerning the doctrine of qualified immunity, the federal anti-riot law, and protests on university campuses. Those memos were also incredibly helpful to me when I wrote the corresponding book chapters.

Mikaela has the ideal skill set for a federal judicial clerkship, a position she is keenly interested in. She already has substantial clerkship experience with a state trial court judge and will be clerking next year for Justice Powell on the Supreme Court of Virginia. Mikaela has excellent research, writing, and communication skills. Although I am sure she has other writing samples, I would direct you to her published Note, Marriage Mandates, which I had the opportunity to read and comment on while still in draft. It makes a very convincing case against mandatory racial and other disclosures in the marriage licensing context.

Mikaela would work extremely well with personnel in your chambers. She can work independently, with a minimum of instruction and guidance. But she is also an excellent collaborator. At the law school, Mikaela helped organize a lecture series on the university campus. I also had the pleasure of working with her on a law school ad hoc committee on diversity issues and an informal mentoring program for first-year students. Mikaela was an engaged and critical member of both groups. When faculty mentors were asked which student(s) they would like to team up with to mentor 1Ls, I instantly thought of Mikaela. She makes everyone feel valued and welcome.

I hope you will have a chance to meet Mikaela, so you can see for yourself why I think so highly of her. If you would like to discuss Mikaela's qualifications further, please do not hesitate to contact me.

Very truly yours,

/s/

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MIKAELA PHILLIPS

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WRITING SAMPLE

Attached is a memorandum I prepared during my summer internship with Victor M. Glasberg & Associates and have obtained the employer's consent to use it as a writing sample. This memorandum is substantially my own work, and it discusses whether Section 4204 of the CARES Act creates a private right of action to prevent the initiation of eviction filings during the federal eviction moratorium.

proceedings during this time. Lastly, there is no evidence that Congress intended to foreclose § 1983 as a remedy to enforce this provision.

DISCUSSION

Section 4024(b) of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) provides a 120-day moratorium¹ on the initiation of eviction filings by lessors of covered dwellings.² The statute specifically provides that qualified lessors “*may not . . . make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.*” CARES Act, § 4024(b)(1) (emphasis added). Impliedly, this provision creates a right of a tenant in a covered dwelling not to be evicted during the moratorium period.

To determine if a statute creates a privately enforceable right under § 1983, courts look to three factors: (1) whether the plaintiff is the intended beneficiary of the statute, (2) whether the plaintiff’s asserted rights are not so “vague or amorphous” as to be beyond the competence of the judiciary to enforce, and (3) whether the statute “unambiguously” creates a binding obligation on the state. *See Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997). Even if the plaintiff proves that the statute creates an individual right, the presumption of enforcement under § 1983 is rebuttable if Congress expressly or impliedly foreclosed § 1983 as a remedy. *Id.* at 341.

However, if there is no evidence that Congress intended to create a new individual right under

¹ The moratorium began on March 27, 2020, the day Congress enacted the CARES Act. CARES Act, § 4024(b), available at <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H3A5541A869FA42ABB1BC52330D24DDFA>. The moratorium will end on July 25, 2020.

² “Covered dwellings” consist of dwellings currently occupied by tenants or those on a covered property, which has a federally backed mortgage. *See* CARES Act, § 4024(a). Note that there are other covered properties that qualify, including covered housing programs under the Violence Against Women Act (VAWA) and participants under the rural housing voucher program under the Housing Act. *See id.*